



Signed: December 05, 2005

Leslie Tchaikovsky

LESLIE TCHAIKOVSKY
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
STEPHEN BRIAN TURNER, etc.,
Debtor.

No. 02-44874 TK
Chapter 7

JOHN T. KENDALL, Chapter 7
Trustee,
Plaintiff,

A.P. No. 02-7273 AT

vs.

SUSANA C. TURNER, et al.,
Defendants.

AH BENG YEO and E. A.
MARTINI,

A.P. No. 02-7298 AT

Plaintiffs,

vs.

STEPHEN BRIAN TURNER, M.D.,
etc.,
Defendant.

1
2
3
4
5
6
7
8
9
10
11
12

MEMORANDUM OF DECISION AFTER TRIAL

The two above-captioned adversary proceedings were consolidated for trial. The Court conducted a trial on most of the claims asserted on March 8, 9, and 10, 2005.¹ At the conclusion of the trial, the Court took the claims under submission. It deferred rendering a decision pending receipt of the above-captioned debtor's (the "Debtor") tax returns. Pursuant to the Court's direction, the parties filed closing briefs on or about November 7, 2005. Having considered the evidence and argument presented by the parties, the Court finds and concludes as set forth below.

13
14
15
16
17
18
19
20
21
22

SUMMARY OF FACTS

The Debtor graduated from medical school in or about 1980. The Debtor and Susana Turner ("Susana") were married on February 16, 1981. After five years of post-graduate work, the Debtor began practicing medicine. Some time during the 1980s, a complaint about the Debtor's professional conduct was lodged with the Medical Board of California, Department of Consumer Affairs. Thereafter, the Debtor was placed on probation and permitted to practice medicine only on certain conditions.

In November 1991, the Debtor and Susana acquired title to and began living in a residence located in Alameda County, California (the "Home"). The deed by which they acquired title was recorded shortly thereafter. In 1994, while the Debtor was still

23
24
25
26

¹The Court severed the dischargeability claim asserted in A.P. No. 02-7298 AT for a later trial, if necessary.

1 practicing medicine on probation, he was convicted of a
2 misdemeanor based on an incident involving a patient. This second
3 incident ultimately led to a license revocation proceeding and to
4 the Debtor's surrender of his medical license. Thereafter, the
5 Debtor supported himself and his family by performing paramedical
6 examinations for insurance companies.

7 In 1994, the Debtor attended a seminar on "asset protection"
8 given by Robert Matthews ("Matthews"). At the conclusion of the
9 seminar, Matthews referred the Debtor to a tax attorney
10 knowledgeable about "asset protection." The attorney provided the
11 Debtor with a form of document entitled Declaration of Trust (the
12 "GG Trust Declaration") which the Debtor and Susana signed but did
13 not record. The GG Trust Declaration purported to establish a
14 Bahamian Trust and declared that certain of the Debtor's and
15 Susana's assets, including the Home, were held in trust for the
16 Debtor's and Susana's three children.

17 Beginning in the Spring of 1995, the Debtor engaged in conduct
18 with respect to the plaintiffs Ah Beng Yeo and E. A. Martini (the
19 "Plaintiffs") that was ultimately found by a jury to be tortious.

20 At about the same time, the Debtor met with Matthews in Ventura
21 to discuss the subject of "asset protection." The Debtor showed
22 Matthews a transmutation agreement, purporting to change the
23 character of the Home to Susana's separate property (the
24 "Transmutation Agreement") and the GG Trust Declaration as
25 evidence of what efforts he had made previously to "protect" his
26 assets. Matthews advised the Debtor about some of the

1 disadvantages of holding real property in an offshore trust. They
2 discussed the use of limited liability companies to "protect"
3 assets.

4 In September 1997, the Plaintiffs filed a lawsuit (the "Tort
5 Action") against the Debtor and in August 1998 obtained a money
6 judgment (the "Judgment"). At about the same time, at the
7 Debtor's direction, Matthews created a Nevada limited liability
8 company named Real Investment Capital Holdings LLC ("RICH LLC")
9 and a Nevada corporation named Proset Enterprises, Inc.
10 ("Proset").² In publicly filed documents, the GG Trust was
11 identified as the 99 percent owner and Proset was identified as
12 the 1 percent owner of RICH LLC. Alfred Cheung, Susana's brother,
13 a resident of Hong Kong, was identified as Proset's President and
14 Secretary.

15 In March 1998, after the Civil Action was filed but before the
16 Judgment was entered, Susana and the Debtor executed a grant deed
17 (the "1998 Deed"), transferring title to the Home to RICH LLC.
18 The 1998 Deed was recorded in April 1998. On March 16, 1999,
19 approximately seven months after the Judgment was entered, the
20 Debtor, acting on behalf of RICH LLP, executed a deed of trust in
21

22 ²The Debtor and Matthews continue to maintain a business
23 relationship. Matthews owns a company with an office in Las
24 Vegas that serves as the resident agent for the RICH LLC and
25 Proset, as well as for numerous other companies. In addition,
26 for a small annual payment, the Debtor serves as the "nominee"
president for at least six limited liability companies formed by
Matthews for other clients who do not wish their names to be
listed in a public filing. The public filing does not reveal
that the Debtor is not a bona fide officer of the companies.

1 favor of Proset (the "Proset Deed of Trust"), encumbering the Home
2 to secure a line of credit. The Proset Deed of Trust was recorded
3 on March 18, 1999.³ The Debtor is identified in the Proset Deed
4 of Trust as the managing partner of RICH LLC.

5 In October 1999, the Plaintiffs filed a fraudulent transfer
6 action against the Debtor and Susana.⁴ On May 31, 2001, the
7 Plaintiffs obtained a writ of execution and attempted to execute
8 the writ against the Home. In June 2001, the Debtor prepared a
9 dissolution petition for Susana in which she sought to dissolve
10 her marriage to the Debtor. In the petition, the Debtor and
11 Susana stipulated that the Home (which had previously been
12 transferred to RICH LLC) should be "confirmed" as Susana's
13 separate property. A dissolution judgment (the "Dissolution
14 Judgment") was entered in September 2001. Notwithstanding their
15

16
17
18 ³The Debtor testified at trial that there was never any
19 draw on the line of credit. As a result, the Proset Deed of
20 Trust did not secure any debt. Moreover, there was no credible
21 testimony at trial that Proset ever had the ability to answer a
22 draw. No credible evidence was provided that either Proset or
23 the GG Trust, Proset's interest holder, had any assets other
24 than their interest the Home. The Debtor testified vaguely that
25 the GG Trust had held investments which generated income. The
26 Court did not believe him.

27
28 ⁴After the Debtor filed his bankruptcy petition, this
29 action was removed to the bankruptcy court and was designated
30 A.P. No. 02-7273 AT. Thus, it is one of the two above-captioned
31 adversary proceedings. As fraudulent transfer actions belong to
32 the bankruptcy estate, the Trustee has assumed the prosecution
33 of this proceeding in place of the Plaintiffs. See Fed. R.
34 Bankr. Proc. 6009.

1 divorce, the Debtor and Susana both continue to live in the Home
2 and file joint tax returns, identifying themselves as married.

3 On December 27, 2001, RICH LLC executed a deed, transferring
4 title to the Home to Susana (the "2001 Deed").⁵ The 2001 Deed was
5 recorded the same day.⁶ On September 10, 2002, less than one year
6 after the recordation of the 2001 Deed, the Debtor filed a
7 petition seeking relief under chapter 7 of the Bankruptcy Code,
8 thereby commencing this case.

9 DISCUSSION

10 As noted above, the trial addressed claims asserted in two
11 adversary proceedings: (1) A.P. No. 02-7273 AT (the "Fraudulent
12 Transfer Action") and (2) A.P. No. 02-7298 AT (the "Objection to
13 Discharge Action"). The Fraudulent Transfer Action was filed by
14 the Plaintiffs in state court in October 1999. It was removed to
15 this court when the Debtor filed his chapter 7 bankruptcy petition
16 in September 2002. Pursuant to Rule 6009 of the Federal Rules of
17 Bankruptcy Procedure, the Trustee took over the prosecution of
18 this action. The Plaintiffs filed the Objection to Discharge
19 Action in the bankruptcy court after the Debtor filed his chapter
20

21
22 ⁵The Court has not been provided with a copy of the 2001
23 Deed. However, the Court assumes that the Debtor signed the
24 2001 Deed on behalf of RICH LLC.

25 ⁶The Dissolution Judgment had no legal effect on Susana's
26 interest in the Home. Prior to the entry of the Dissolution
Judgment, Susana had transferred her separate property interest
in the Home, acquired pursuant to the Transmutation Agreement,
to RICH LLC.

1 7 bankruptcy petition. They remain the plaintiffs in that action.
2 The Court will address each action in turn.

3 **A. FRAUDULENT TRANSFER ACTION**

4 The Fraudulent Transfer Action asserts four claims for relief.
5 The first two claims seek to avoid the various pre-petition
6 transfers of the Home by the Debtor as actually and constructively
7 fraudulent pursuant to bankruptcy and state law. Section 548 of
8 the Bankruptcy Code permits a trustee to avoid a transfer of an
9 interest of the debtor in property that is actually or
10 constructively fraudulent provided it was made within one year of
11 the bankruptcy filing. See 11 U.S.C. § 548.

12 Section 544(b) of the Bankruptcy Code permits a trustee to
13 avoid a transfer that would have been avoidable by an unsecured
14 creditor under applicable state law provided that there is such a
15 creditor with a claim against the bankruptcy estate. See 11
16 U.S.C. § 544(b). Section 3439 et seq. of the California Civil Code
17 permits a creditor to avoid the transfer of an "asset" of the
18 debtor that is actually or constructively fraudulent that is made
19 within four years prior to the date the avoidance action is filed.
20 See Cal. Civ. Code §§ 3439.07, 3439.09. "Asset" is defined to
21 include only the unencumbered, nonexempt value of the property
22 transferred. See Cal. Civ. Code § 3439.01(a).

23 Both bankruptcy law and California law define an actually
24 fraudulent transfer as one made with "actual intent to hinder,
25 delay, or defraud a creditor." See 11 U.S.C. § 548(a)(1)(A); Cal.
26 Civ. Code § 3439.04(a)(1). Both bankruptcy law and California law

1 define a transfer that is constructively fraudulent, in essence,
2 as one for which the debtor does not received reasonably
3 equivalent value and which is made when the debtor is insolvent or
4 which renders the debtor insolvent. See 11 U.S.C. § 548(b); Cal.
5 Civ. Code § 3439.05. In sum, despite their similarities, the
6 right to avoid a fraudulent transfer under the Bankruptcy Code
7 differs from the right to avoid a fraudulent transfer under
8 California law in two significant respects. First, the "reach
9 back" period under the Bankruptcy Code is only one year. The
10 "reach back" period under California law is four years or, in the
11 case of "actual fraud," if later, one year after the transfer
12 could reasonably have been discovered. See Cal. Civ. Code §
13 3439.09(a). Second, under the Bankruptcy Code, the entire
14 transfer is avoided. Under California law, only the transfer of
15 the "asset" is avoided.

16 In the first claim for relief, the Trustee seeks to avoid all
17 of the transfers referred to above as actually fraudulent under
18 both 11 U.S.C. § 548 and Cal. Civ. Code § 3439 et seq. In the
19 second claim for relief, the Trustee seeks to avoid all of the
20 transfers referred to above as constructively fraudulent under
21 both 11 U.S.C. § 548 and Cal. Civ. Code § 3439 et seq. In the
22 third claim for relief, the Trustee seeks a determination that,
23 despite the numerous transfers, the Debtor retained his equitable
24 interest in the Home at the time he filed his bankruptcy petition.
25 Thus, he seeks a determination that the Home is property of the
26

1 Debtor's bankruptcy estate. In the fourth claim for relief, he
2 seeks turnover of the Home.

3 The evidence presented at trial persuaded the Court that all
4 of the transfers in question were made with actual intent to
5 hinder, delay, or defraud creditors. Actual intent must generally
6 be established by reference to external circumstances. California
7 fraudulent transfer law has codified some of the types of
8 circumstances commonly found to indicate actual intent to defraud.
9 Several of these "badges of fraud" are present here.⁷ The Court
10 was also persuaded that the Debtor received no consideration for
11 any of the transfers and that they rendered the Debtor insolvent.

12 The Court did not believe the Debtor's and Susana's testimony
13 that the transfer reflected by the Transmutation Agreement was
14 made to restore marital harmony and to give Susana a sense of
15 financial security. It was obvious to the Court that the Debtor
16 exerted complete control over the disposition of the Home both
17 before and after the execution of the Transmutation Agreement.
18 However, the transfer reflected by the Transmutation Agreement is
19 irrelevant because, as noted above, in 1998, Susana transferred
20 her separate property interest in the Home to RICH LLC pursuant to
21 the 1998 Deed. The Debtor obviously considered the GG Trust
22

23
24 ⁷For example, all of the transfers were to insiders; the
25 Debtor retained possession and control of the Home after the all
26 of the transfers; the Debtor had been sued before most of the
transfers; no consideration was received for the transfers; and
the Debtor was rendered insolvent by the transfers. See Cal.
Civ. Code § 3439.04(b).

1 Declaration as not having effected a transfer because he did not
2 bother to have any document executed by the trustee of the GG
3 Trust, transferring title back to the Debtor and Susana (or to
4 Susana alone) before he and Susana executed the 1998 Deed.

5 During the pre-trial motion stage of the proceeding, the Court
6 viewed the 1998 Deed as the critical transfer for fraudulent
7 transfer purposes. Because this transfer occurred more than one
8 year before the filing of the Debtor's bankruptcy petition, the
9 Court assumed that the Trustee's remedies were limited to
10 avoidance of the "asset" transferred pursuant to the 1998 Deed.
11 As a result, at the Court's direction, Susana and the Trustee each
12 called appraisers as expert witnesses to testify as to the
13 unencumbered, nonexempt value of the Home at the time of the 1998
14 transfer.

15 Susana's appraiser testified that the Home had no "asset"
16 value at that time. The Trustee's appraiser testified that the
17 Home had approximately \$7,700 in unencumbered, nonexempt value.
18 Although both appraisers were competent and credible, the Court
19 found the Trustee's appraiser methodology more reasonable. Thus,
20 if the Trustee were forced to rely on California fraudulent
21 transfer avoidance law, the Court would grant the Trustee a
22 judgment avoiding the transfer of the Home to the extent of
23 \$7,700. However, based on the testimony at trial and further
24 analysis of the series of transfers persuades the Court that the
25 critical transfer is reflected by the 2001 Deed.
26

1 The evidence presented persuaded the Court that RICH LLC and
2 Proset were the Debtor's alter egos. The Debtor admitted that
3 these entities were created and their relationship structured to
4 maximize the protection of his assets: i.e., the Home. "Asset
5 protection" is not illegal and is honored by the law if done for
6 a legitimate purpose. For example, an individual may do business
7 through a corporation or limited liability company and will not be
8 held personally liable for the debts of the entity. The assets of
9 the corporation or limited liability company will not be
10 considered the assets of the individual interest holder. However,
11 an entity or series of entities may not be created with no
12 business purpose and personal assets transferred to them with no
13 relationship to any business purpose, simply as a means of
14 shielding them from creditors. Under such circumstances, the law
15 views the entity as the alter ego of the individual debtor and
16 will disregard it to prevent injustice.

17 Under similar facts, a trial court found that the corporation
18 created by a judgment debtor to hold his assets was the judgment
19 debtor's alter ego. This finding was noted with approval by the
20 Ninth Circuit Court of Appeals. See Fleet Credit Corp. v. TML
21 Bus Sales, Inc., 65 F.3d 119, 120 (9th Cir. 1995). In Fleet, the
22 trial court found that Berthold, the judgment debtor, had operated
23 a corporation:

24 ...as an extension of himself. He personally
25 directed the transfer...and did so for reasons
26 that had nothing whatsoever to do with the
operation of the corporate entity....[I]t is
beyond cavil that an inequitable result would

1 follow were the Court to permit Berthold to
2 shield himself with Taylor's corporate form.

3 Id. at 120.

4 Moreover, in Fleet, as here, Berthold caused his alter ego
5 corporation to make a further fraudulent transfer. The Court of
6 Appeals noted that: "for Berthold's creditors to get...[Berthold's
7 assets], they had to penetrate two layers of fraud, the alter ego
8 corporation, and the fraudulent conveyance." Id. at 121. Thus,
9 the fraudulent transfer by the alter ego corporation could be
10 treated as a fraudulent transfer by Berthold. Id. at 121-22.

11 Thus, the only relevant transfer to be avoided is the transfer
12 reflected by the 2001 Deed: i.e., by the Debtor (through his alter
13 ego, RICH LLC) to Susana. The Court has received no evidence of
14 the value of the "asset" transferred pursuant to the 2001 Deed.
15 However, because this transfer occurred within one year of the
16 bankruptcy filing, there is no need to reopen the evidence for
17 this purpose. The Trustee is entitled to avoid the transfer in
18 its entirety under 11 U.S.C. § 548(a).

19 The avoidance of this transfer causes the interest in the Home
20 to revert to RICH LLC which, as discussed above, the Court views
21 as the Debtor's alter ego. Because the Debtor and Susana were
22 divorced before the bankruptcy was filed, the avoidance of the
23 transfer reflected by the 2001 Deed causes the entire interest in
24 the Home to reverts to the Debtor as his separate property. Thus,
25 the Home is property of the Debtor's bankruptcy estate in its
26 entirety. As a result, the Trustee is also entitled to a judgment

1 on his fourth claim for relief: i.e., for turnover of the Home
2 pursuant to 11 U.S.C. § 542.

3 **B. DENIAL OF DISCHARGE CLAIM**

4 The Denial of Discharge Action seeks denial of the Debtor's
5 discharge under 11 U.S.C. § 727(a)(2), (4), and (5). Section
6 727(a)(2) of the Bankruptcy Code provides, in pertinent part, that
7 an individual chapter 7 debtor may not obtain a discharge if "the
8 debtor, with intent to hinder, delay, or defraud a creditor...has
9 transferred... or concealed...(A) property of the debtor, within
10 one year before the date of the filing of the petition; or (B)
11 property of the estate, after the date of the filing of the
12 petition." The transfer of the Home by RICH LLC to Susana
13 pursuant to the 2001 Deed occurred within one year of the
14 bankruptcy filing. As discussed above, the Court finds and
15 concludes that RICH LLC was the Debtor's alter ego and that the
16 transfer reflected by the 2001 Deed was made with actual intent to
17 hinder, delay, or defraud the Plaintiffs. Thus, the Debtor's
18 discharge should be denied based on 11 U.S.C. § 727(a)(2).

19 The Debtor's discharge should also be denied under 11 U.S.C.
20 § 727(a)(4). Section 727(a)(4) provides, in pertinent part, that
21 an individual chapter 7 debtor may not obtain a discharge if "the
22 debtor knowingly and fraudulently, in or in connection with the
23 case- (A) made a false oath or account...." The Court concludes
24 that the Debtor knowingly and fraudulently made several false
25 oaths on the Debtor's Schedules of Assets and Liabilities (the
26 "Debtor's Schedules") and Statement of Financial Affairs (the

1 "SOFA"). Both documents were signed by the Debtor under penalty
2 of perjury.

3 First, the Court views as a knowing and false oath the
4 Debtor's omission of any reference to his interest in the Home.
5 Schedule A of the Debtor's Schedule of Assets and Liabilities (the
6 "Debtor's Schedules") asked the Debtor to list any interest in
7 real property and to describe the nature of the interest. The
8 Court was persuaded that, notwithstanding the numerous paper
9 transfers of his interest in the Home, at the time he filed his
10 bankruptcy petition, the Debtor retained an equitable interest in
11 the Home. He failed to list that interest on Schedule A.

12 In addition, item 10 on the Debtor's SOFA directed him to list
13 any transfers of property other than in the ordinary course of
14 business within one year prior to the bankruptcy filing. As
15 discussed above, the Court views the 2001 Deed as a transfer by
16 the Debtor. The Debtor failed to list this transfer and marked
17 the box indicating that there were no such transfers. The Court
18 views this omission and mark as a knowing and fraudulent false
19 oath.

20 Second, Schedule B of the Debtor's Schedules, item 12, asked
21 the Debtor to list any interests in incorporated or unincorporated
22 businesses. As discussed above, the Court was persuaded that the
23 Debtor was the equitable owner of RICH LLC and Proset at the time
24 he filed his bankruptcy petition. The Debtor failed to list
25 these interests and instead checked the space in the column
26 indicating that he had no interest in any incorporated or

1 unincorporated business. The Court also views this omission and
2 mark as a knowing and fraudulent false oath.

3 Third, Schedule I and J required the debtor to list his income
4 and expenses at the time the bankruptcy petition is filed. On
5 Schedule I, the Debtor identified himself as divorced. He listed
6 a monthly income of \$5,000 and, on Schedule J, listed expenses of
7 \$5,106, the largest item being an alimony payment of \$4,657.
8 This was inconsistent with the Debtor's sworn statements in his
9 tax returns for that year in two respects. As noted above, in
10 their tax returns, filed jointly notwithstanding their prior
11 divorce, the Debtor and Susana identified themselves as married.
12 Not surprisingly, they also listed no alimony payment.

13 Although the Court believes that the Debtor's and Susana's
14 divorce was effected for fraudulent purposes, they are nonetheless
15 divorced. Thus, the Debtor's false statement under oath
16 concerning his marital status is the one made on his tax returns,
17 not the one made on Schedule I. However, based on the evidence
18 presented, the Court finds and concludes that the Debtor's
19 statement on Schedule J that his monthly expenses included an
20 alimony payment of \$4,675 was a knowing and fraudulent false
21 statement. Susana testified credibly that the Debtor did not pay
22 her alimony of \$4,675 a month. Instead, he simply gave her money
23 when she asked for it. The Court is persuaded that this false
24 statement, standing alone, warrants denial of the Debtor's
25 discharge.
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

With respect to the Denial of Discharge Action:

1. The Plaintiffs are entitled to a judgment denying the Debtor's discharge pursuant to 11 U.S.C. § 727(a)(2) and (4). Their claim for denial of the Debtor's discharge pursuant to 11 U.S.C. § 727(a)(5) will be dismissed with prejudice.

2. The second claim for relief, seeking to except the Plaintiffs' Judgment from the Debtor's discharge, is dismissed as moot.

Counsel for the Trustee is directed to submit a proposed form of judgment in accordance with this decision.

END OF DOCUMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

COURT SERVICE LIST

Timothy Carl Aires
Aires Law Group
180 Newport Center Drive, Ste. 260
Newport Beach, CA 92660

Herman Franck
Law Offices of Herman Franck
926 J St., Ste. 914
Sacramento, CA 95814

Drew Henwood
211 Sutter St., Ste. 603
San Francisco, CA 94108-4435

Chris D. Kuhner
Kornfield, Paul & Nyberg
1999 Harrison St., Ste. 800
Oakland, CA 94612