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Wednesday, October 9, 2002

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In re

EDWARD and SANDRA STRIEPEKE,

[Debtor](#) (s).

No. 02-10039

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JEFFRY LOCKE, [Trustee](#),

[Plaintiff](#) (s),

v.

A.P. No. 02-1080

STEVEN K. STRIEPEKE,

[Defendant](#) (s).

### **Memorandum of Decision**

Defendant Steven Striepeke is the adult son of debtors Edward and Sandra Striepeke. In this [adversary proceeding](#) plaintiff Jeffry Locke, the [Chapter 7](#) trustee, seeks to avoid the transfer to Steven of the debtors' home at 862 Santa Ana Drive, Santa Rosa, which has been their home for twenty years.

The trustee concedes [that the transfer](#) was not intended to defraud creditors. Recognizing that his parents were in financial difficulty and could reduce their monthly mortgage expense if they refinanced, Steven had them deed over their home to him. Using his income to qualify, he refinanced the home and "rented" it back to his parents for the amount of the new loan. Unfortunately, his parents filed their Chapter 7 [bankruptcy petition](#) just two months

later. The trustee seeks to avoid the transfer pursuant to § 548(a)(1)(B) of the Code, which applies to transfers not meant to defraud but made for less than reasonably equivalent value made while the debtor is insolvent. The debtors were insolvent at the time of the transfer.

Steven set the purchase price at what he thought was the fair value of the property. Demonstrating the same degree of competence as an appraiser as he demonstrated in the role of insolvency advisor, Steven got it wrong. He believed that the property was worth \$184,000.00, but in fact the property was worth at least \$220,000.00.

What constitutes reasonably equivalent value is largely a question of fact. 5 Collier on Bankruptcy (15 Ed.Rev.), ¶ 548.05[1][b], p. 548-35n12 and associated text. In this case, the “sale” to Steven was without a commission, and therefore the equivalent of a sale at about \$195,000.00 on the open market. This figure is about 88% of the market value at the time. Taking all the facts and equities into account, including the modest nature and value of the property, the court finds that the sale price paid by Steven was close enough to the actual value to constitute a reasonably equivalent value.

For the foregoing reasons, plaintiff will take nothing by his complaint, which will be dismissed with prejudice. Each side shall bear its own costs of suit.

This memorandum constitutes the court’s findings and conclusions pursuant to FRCP 52(a) and FRBP 7052. Counsel for Steven shall submit an appropriate form of judgment forthwith.

Dated: October 9, 2002

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Alan Jaroslovsky  
U. S. [Bankruptcy Judge](#) 

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