SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: WALTER B. TOLUB PART 4

Justice

Index Number : 108711/2007

AMIR, PERETZ

VS.

EASTON & ECHTMAN, P.C.

SEQUENCE NUMBER : 007

OTHER RELIEFS

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

n this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

Dated: 2/4/09

WALTER B. TOLUB J.S.C.

Check one: ☐ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☒ REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

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PERETZ AMIR,

Petitioner,

-against-

EASTON & ECHTMAN, PC, IRWIN ECHTMAN, DAVID ETKIND and ECHTMAN & ETKIND, LLP,

Respondents.

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Index No. 108711/07
Motion Seq. 007

WALTER B. TOLUB, J.:

This is Petitioner's motion for an order directing conveyances in the sum of $75,000 made by Respondent Easton & Echtman, PC to Respondent David Etkind, be set a side and a judgment rendered in favor of Petitioner for said amount from Mr. Etkind.

FACTS

As stated in this Court's findings of fact and conclusion of law dated August 18, 2008, Easton and Echtman P.C. was formed in 1972 by the late Henry Easton and Irwin M. Echtman. Mr. Easton died in 1986 and thereafter Mr. Echtman was its sole shareholder. In 1998 the firm had grown to four lawyers and 10 employees. Mr. Etkind joined the firm in 1997 before leaving to work with a competing firm in or about 2002.

In February 1998, the "Texaco" case, which gave rise to the fee dispute at issue, was settled resulting in a substantial fee being earned by Easton and Echtman. Entitlement to that fee was claimed by Joel Martin Aurnou and Peretz Amir. The fees were placed in escrow pending the resolution of the dispute.

Importantly, Respondents claim that prior to settlement of that suit, Mr. Etkind wanted to leave Easton and Echtman. Mr. Etkind claims, and Mr. Echtman's transcript from the March 26-27, 2008 trial confirms, that Mr. Etkind and Mr . Echtman entered into an oral agreement in December 1997, whereby Mr. Echtman agreed to pay Mr. Etkind $125,000 if it recovered money in the employment discrimination action and that in exchange Mr. Etkind would continue working at the firm on the Texaco case during a financially difficult time for the firm.

Shortly after the litigation over the fee dispute, Mr. Echtman suffered cardiac arrest and was unable to continue practicing law. The offices of Easton and Echtman essentially stopped working, the staff was disbandened and the firm's only function was collecting its receivables.

On April 17, 2002, Judge York granted Defendants' motion for summary judgment and dismissed all of Plaintiff's claims for attorney's fees owed.

On June 20, 2002, Easton and Echtman entered into a settlement agreement with Joel Martin Aurnou for the release of $1,000,000 to Easton and Echtman with an additional $800,000 to be released to Eaton and Echtman in January 2003.

Additionally, in 2002 Easton and Echtman paid Mr. Etkind $50,000, marked as payroll on Easton and Echtman's records. In 2003, Mr. Echtman also paid Mr. Etkind $75,000 which was marked as payroll. Both Mr. Echtman and Mr. Etkind state that the $125,000 was in

satisfaction of the oral agreement they entered into in 1997.

Although Mr. Echtman never officially disbanded Easton and Echtman, in early 2003, he established the Law Firm of Erwin M. Echtman P.C.

On December 9, 2003, the Appellate Division reversed the April 17, 2002 decision dismissing Plaintiff's claims for attorneys' fees and set the case for trial on the issues of whether Plaintiff was an associate at the Easton Echtman firm and whether he had worked on the "Texaco" case.

In 2005 a trial was held. The defense advanced by Mr. Echtman, as the judgment debtor's sole principal, was that while he had agreed to share the fee, it was not with Peretz Amir, but rather with Sharon Amir, who had no relationship to Echtman or the firm. Mr. Echtman argued that he was not required to pay the counsel fee to Sharon Amir because it would violate the prohibition under DR -2-107 of sharing a fee with someone who was not an associate of his law firm. Mr. Echtman's other defense was that even if it were to be determined that the agreement was to pay Peretz Amir the counsel fee, Peretz Amir was not entitled to the money because he did not qualify as an associate at the judgement debtor's firm. Following the trial, the court dismissed Peretz Amir's claims for counsel fees.

In 2007, the Appellate Division reversed and judgment was entered in favor of Plaintiff. The Appellate Division calculated the damage of one-third (1/3) of the legal fee of $2,880,000 to be $960,000 with interest from February 4, 1998. The Judgment was

entered on May 8, 2007 in the amount of $1,762,454.80 in favor of Peretz Amir and against Easton and Echtman.

Easton and Echtman then claimed that it was unable to pay Peretz Amir since it was no longer solvent. Mr. Amir claimed that the Chase account which held his counsel fees was drained by Mr. Echtman and Easton and Echtman through fraudulent conveyances. The underlying action then ensued.

On September 5, 2007 this court ordered Echtman to show why deposits made in, and then withdrawn from, the account of Easton and Echtman at HSBC in the amount of $1,000,000, which were then deposited in The Chase Manhattan Bank (Chase), and an additional $801,748.87 deposited in, and then withdrawn from, the account of Easton and Echtman at HSBC, and then deposited in Picet Et Cie Geneva (Swiss Bank), should not be turned over to Plaintiff's attorney. This court ordered that, to the extent that the monies were withdrawn from the above listed accounts, the Defendant was to advise the Plaintiff of the amount of the withdrawals, the dates and payees and to explain why each payment was not a fraudulent conveyance.

In response to this court's order, Easton and Echtman only explained a small portion of transactions. For example, Echtman admitted that he lent $145,000 of the $801,748.47 deposited in the Swiss Bank, to one of his son's corporations. Overall Echtman's response to the order issued by this court was incomplete and vague at best. A trial on fraudulent conveyances followed.

A trial was held on March 26, 2008 and March 27, 2008.

The rule is that a transfer without consideration by one who is then a debtor raises a rebuttable presumption of fraud (Scola v. Morgan, 66 AD2d 288 [1st Dept 1979]). This Court found that it was clear from the evidence presented at trial that the conveyances and transfers of Easton and Echtman and Mr. Echtman were fraudulent. More specifically, this Court found that Easton and Echtman was a company which, at the time of the initial judgment through the present, essentially stopped functioning other than collecting its receivables. The company had no employees and its office was Mr. Echtman's living room. Even for the collection of its receivables, Echtman engaged another firm, Eachtman and Etkind, LLP. Mr. Echtman also established the Law Firm of Irwin M. Echtman PC in 2003.

This Court pointed out that at trial, Mr. Echtman was unable to answer why, inter alia; (1)Easton and Echtman paid a bookkeeping company when it had no employees; (2) why it paid a different company for legal work when all legal work was done through Irwin M. Echtman PC; (3) **why bonuses were being paid to employees that did not work for Easton and Echtman**; (4) Mr. Echtman could not remember what his office expenses were; (5) Mr. Echtman claimed that there had been mistaken deposits in Easton and Echtman PC by Irwin Echtman; and (6) Mr. Echtman could not explain how he was drawing such a large salary from Easton and Echtman when no work was being performed (*emphasis added*). Furthermore, Easton and Echtman loaned hundreds of thousands of dollars to third-parties, including Mr. Echtman's son's company of which Mr. Echtman owns a 40% interest.

Mr. Echtman also unilaterally transferred company money to his retirement account at Merrill Lynch. There was no consideration for any of those conveyances.

Mr. Echtman's transfers and conveyances were made without fair consideration from the time the underlying action was commenced through the present. This Court found that such transfers without the required consideration raises the presumption of fraud (Scola v. Morgan, 66 AD2d 288 [1st Dept 1979]). Mr. Eachtman's testimony[1] and the evidence presented had not overcome the presumption of fraud. Mr. Echtman's actions constituted fraudulent conveyances pursuant to Debtor Creditor Laws §273 and 273-a.

Accordingly, this Court held that Mr. Echtman's actions constituted fraudulent conveyances and that Mr. Amir was entitled to $1,762,454.80 plus interest from May 8, 2007 from Mr. Echtman. Mr. Amir has not recovered on his judgment.

The issue now presented is whether Mr. Amir may recover $75,000 that was conveyed to Mr. David Etkind based on Mr. Echtman's fraudulent acts.

Discussion

Petitioner argues that based on this Court's finding that Mr. Echtman fraudulently conveyed funds, that he may recover pursuant to Debtor and Creditor Law §278. Specifically, Petitioner argues that included in Mr. Echtman's fraudulent conveyances were payments to Mr. Etkind in the amount of $75,000.

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[1]Mr. Etkind did not testify at the trial.

Debtor and Creditor Law § 278 provides in relevant part that:

> 1. Where a conveyance or obligation is fraudulent as to a creditor, when his claim has matured, may, as against any person ***except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase*** . . .
> a. Have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim

(Debtor and Creditor Law §278 [*emphasis added*]).

Petitioner points to two payments made to Mr. Etkind in 2003, in which Mr. Echtman's records indicate that the payments were part of payroll. Petitioner argues that Mr. Echtman's explanation at trial and Mr. Etkind's submitted affidavit, that the payments were a bonus for work performed on the Texaco case, years after the work was actually completed, is insufficient to constitute fair consideration and that Mr. Etkind knew at all times about the litigation between Mr. Amir and Mr. Echtman regarding fees in the Texaco case.

Respondent, Mr. Etkind argues that he entered into an oral agreement with Mr. Echtman in 1997, years before there was a dispute with Petitioner and that Mr. Echtman promised to pay $125,000 depending on the outcome of the Texaco matter, in consideration for Mr. Etkind staying at the firm and working on cases during the financially difficult times. After Mr. Echtman received money from the Texaco matter he made partial payments to Mr. Etkind, two of which comprise the $75,000 Petitioner is seeking in this motion. Moreover, Mr. Etkind states that he was not aware of the litigation or the outcome of litigation between Mr. Amir and Mr. Echtman and

that he dealt with Mr. Echtman at arm's length while working at a competing law firm.

In order to have a conveyance set aside, the party attacking the conveyance must prove that the conveyance is not founded upon a valuable consideration [fraudulent] and that the grantee had knowledge of the fraud at the time of the purchase (*See generally* Sabatino v. Cannizzaro, 247 AD 20 [1st Dept 1934]; Weiser v. Kling, 38 AD 266 [2nd Dept 1903]).

Even when there is a fraudulent transfer of a debtor's assets there must still be evidence that the receiver had knowledge of any intent to defraud creditors (Chemtex, LLC v. St. Anthony Enterprises, Inc., 490 F.Supp.2d 535 [2007]).

Here there are questions of fact as to whether Mr. Echtman transferred the $75,000 in performance of the 1997 oral agreement between Mr. Echtman and Mr. Etkind and whether Mr. Etkind knew the $75,000 transfer was fraudulent back in 2003 because of the ensuing fee dispute between Petitioner and Mr. Echtman.

Accordingly, it is

ORDERED that the issues of whether Mr. Echtman transferred the $75,000 in performance of the 1997 oral agreement between Mr. Echtman and Mr. Etkind and whether Mr. Etkind knew the $75,000 transfer was fraudulent is referred to a Special Referee to hear and report with recommendations, except that, in the event of and upon the filing of a stipulation of the parties, as permitted by CPLR 4317, the Special Referee, or another person designated by the

parties to serve as referee, shall determine the aforesaid issues; and it is further

ORDERED that this motion is held in abeyance pending receipt of the report and recommendations of the Special Referee and a motion pursuant to CPLR 4403 or receipt of the determination of the Special Referee or the designated referee; and it is further

ORDERED that a copy of this order with notice of entry shall be served on the Clerk of the Judicial Support Office (Room 311) to arrange a date for the reference to a Special Referee.

This constitutes the decision and order of the court.

Dated: 2/1/09

HON. WALTER B. TOLUB, J.S.C.

FILED
FEB 09 2009
COUNTY CLERK'S OFFICE
NEW YORK