

Not intended for publication

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

IN RE

LAWRENCE P. LANGLINAIS and
THERESA J. LANGLINAIS,

CASE NO. 96-11049

Debtors.

Chapter 7

TED M. HUNDERUP as
CHAPTER 7 TRUSTEE,

Plaintiff,

v.

Adv. Pro. No. 97-5196

JIMMY DODSON,

Defendant.

MEMORANDUM OPINION AND ORDER RE
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND
THE PLAINTIFFS' OBJECTION THERETO

This Court conducted a hearing on the Defendant's Motion for Summary Judgment and the Plaintiff's Objection thereto on June 10, 1998. FED. R. BANKR. P. 9014. This is a core proceeding. 28 U.S.C. § 157(b). The following shall serve as the Court's findings of facts and conclusions of law pursuant to FED. R. BANKR. P. 7052.

FINDINGS OF FACT

The facts in this case are virtually undisputed. On September 12, 1994, the debtor/plaintiff Lawrence Langlinois, and the defendant, Jimmy Dodson, purchased a ten-acre tract of land located at 4564 Holmes Road in Memphis, TN. The plaintiff and the defendant owned and held the land as tenants in common. From the time of purchase until November 1995, Dodson made all of the monthly mortgage payments on the Holmes Road property. As a result of this payment history, Langlinois owed Dodson the sum of \$25,000.00 by November 1995. In satisfaction of this debt, Langlinois quit-claimed his interest in the Memphis property to Dodson on November 15, 1995.

Five months after transferring his interest in the Memphis property to Dodson, Langlinais and his wife filed a voluntary petition for bankruptcy relief on April 8, 1996. On July 17, 1997, the debtors filed the instant adversary proceeding against Dodson seeking to set aside the quit-claim transfer of the Memphis land as a preference. In such complaint, the plaintiffs alleged that Dodson was an insider and, as a result, the transfer fell within the confines of 11 U.S.C. § 547(b). On January 26, 1998, the defendant filed a motion for summary judgment in which he asserted that he was not an insider of the debtor within the definition of the Bankruptcy Code. At the hearing on the Motion for Summary Judgment, no evidence was presented to the Court that Dodson was an "insider" of the debtors. There was no proof that Dodson is a relative of the debtors, that he was a relative of a general partner of the debtors or that he was a general partner of the debtors.

CONCLUSIONS OF LAW

Summary judgment under Fed. R. Civ. P. 56(c), made applicable to bankruptcy adversary proceedings by Fed. R. Bankr. P. 7056, is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrell*, 477 U.S. 317, 322 (1986). Any inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

In order for a pre-petition transfer of a debtor's interest in property to be set aside as a preference under 11 U.S.C. § 547(b), it must be proven that the transfer was:

- (1) to or for the benefit of a creditor;
- (2) for or on account of an antecedent debt . . .;
- (3) made while the debtor was insolvent;
- (4) made -
 - (A) on or within 90 days before the date of the filing of the petition;or
 - (B) *between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider;* and
- (5) that enables such creditor to receive more than such creditor would receive if -
 - (A) the case were a case under chapter 7 of this title;
 - (B) the transfer had not been made; and
 - (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

11 U.S.C. § 547(b) (emphasis added). In the instant case, the subject transfer of the debtor's interest in

the land occurred more than ninety days before the Langlinais' filed their Chapter 7 petition.

Additionally, the defendant, Jimmy Dodson, is not an insider of the debtor within the meaning of § 101(31)(A) of the Bankruptcy Code. As a result, this Court has no choice but to grant the defendant's motion for summary judgment. An order will be entered in accordance herewith.

ORDER

It is therefore **ORDERED** that the Defendant's Motion for Summary Judgment is GRANTED.

It is further **ORDERED** that the Plaintiffs' Objection to the Motion for Summary Judgment is DENIED.

IT IS SO ORDERED.

BY THE COURT,

G. HARVEY BOSWELL
United States Bankruptcy Judge

Date: July 9, 1998