

UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

In Re:

**OSCAR E. GARCIA and
HODELIA GARCIA,**

Debtors.

**Bankruptcy Case
No. 10-40937-JDP**

**GARY L. RAINSDON,
Trustee,**

Plaintiff,

vs.

**ANGEL GARCIA and
EDITH GARCIA,**

Defendants.

**Adv. Proceeding
No. 11-8016-JDP**

MEMORANDUM OF DECISION

Appearances:

William Hollifield, HOLLIFIELD LAW OFFICE, Twin Falls, Idaho,
Attorney for Plaintiff.

Kent Jensen, Burley, Idaho, Attorney for Defendants.

Introduction

On May 12, 2011, a Motion for Summary Judgment was filed in this adversary proceeding by Defendants Angel and Edith Garcia (“Defendants”). Dkt. No. 10. Plaintiff Gary L. Rainsdon (“Plaintiff”), the trustee in the chapter 7¹ bankruptcy case of Oscar and Hodelia Garcia (“Debtors”), opposed the motion. Dkt. No. 18. The Court heard oral argument on the motion on July 26, 2011, after which the Court permitted the parties to submit additional briefing. Dkt. No. 20. Thereafter, the motion was taken under advisement. The Court has considered the submissions of the parties, the arguments of counsel, as well as the applicable law. This Memorandum disposes of the motion. Fed. R. Bankr. P. 7052; 9014.

Facts

The material facts are not in dispute.

¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101 – 1532, and all rule references are to the Federal Rules of Bankruptcy Procedure, Rules 1001 – 9037. All “Civil Rule” references are to the Federal Rules of Civil Procedure.

Debtors formerly owned a house located at 114 Oregon Street, in Gooding, Idaho (“the Property”). Debtors lived at the Property, paid the mortgage payments to Zion’s Bank, paid the real property taxes due, and maintained an insurance policy on the Property.

Debtor Oscar Garcia and Defendant Angel Garcia are brothers. On June 20, 1998, Debtors entered into a Rent to Own Agreement (“RTO Agreement”) concerning the Property with Defendants. Dkt. No. 19, Ex.

A. The RTO Agreement required Defendants to: 1) “make the \$315 [mortgage] payment for [Debtors] to Zions Bank” each month; 2) pay the real property taxes on the Property as they became due; 3) pay the \$25 monthly premium for the insurance policy covering the Property; and 4) pay all utilities in Defendants’ names. The RTO Agreement further provided:

When [Defendants] have paid off the mortgage at Zions National Bank, [Debtors] agree to provide [Defendants] with a Warranty Deed and clear title to this property with no debt owing.

Id.

The RTO Agreement referred to the Property solely by its street

address; no legal description was included. The parties' signatures on the RTO Agreement were not acknowledged or notarized. *Id.* Although executed by the parties on June 20, 1998, the RTO Agreement was not recorded in the Gooding County real property records until April 13, 2000. *Id.*

Defendants took possession of the Property. On October 18, 2008, over ten years after executing the RTO Agreement, a second agreement was entered into by the parties, apparently in response to Defendants' desire to allow a third party to move onto the Property prior to completion of the mortgage payments and transfer of title from Debtors to Defendants. Dkt. No. 19, Ex. B. This second agreement, entitled simply "Contract," recites that Debtors are the owners of the Property, and Defendants are the purchasers. *Id.* It reiterates Defendants' obligation to pay taxes and certain utilities, and notes that Defendants agree to pay \$312 per month, and any late fees or other expenses, until a current balance of \$14,402.64 is paid in full. *Id.* The Contract further requires Defendants to keep the Property clean and in good repair, and to maintain the grounds.

Id. Finally, the Contract expressly prohibits Defendants from leasing, renting or allowing occupancy of the Property by another party until payment of the monetary obligations has been made in full. *Id.*

Like the RTO Agreement, the Contract contains only a street address for the Property. While the signatures of both Defendants on the Contract are acknowledged, only Oscar Garcia signed the Contract on behalf of Debtors; Hodelia's signature does not appear on the document. The Contract was not recorded. *Id.*

Some time in October 2009,² Defendants made the last payment on the mortgage to Zions Bank. Belatedly true to their word, on April 6, 2010, Debtors executed and gave Defendants a warranty deed, transferring title to the Property to Defendants. Dkt. No. 19, Ex. C. The warranty deed contains a legal description of the Property, Debtors' signatures as the

² There is a discrepancy in the facts concerning the precise date Defendants paid off the mortgage. In the Amended Complaint, Plaintiff alleges that it occurred on October 21, 2009. Dkt. No. 21, ¶ 11. On the other hand, in their Reply Brief, Defendants allege that the debt was paid off on October 6, 2009. Dkt. No. 24, p. 4. The discrepancy is not material to resolution of the legal issues raised by Defendants' motion.

grantors are properly acknowledged, and the deed was recorded. *Id.*

On May 27, 2010, Debtors filed a chapter 7 bankruptcy petition. Case No. 10-40937-JDP Dkt. No. 1. Plaintiff was appointed to serve as the trustee in the case, and on February 17, 2011, he commenced this adversary proceeding against Defendants seeking to avoid the transfer of the Property from Debtors to Defendants. Dkt. No. 1. Defendants filed an answer to the adversary Complaint, Dkt. No. 7, and later, the instant summary judgment motion, Dkt. No. 10.

Summary Judgment Standard

This Court recently summarized the standard for resolving summary judgment motions:

In adversary proceedings before the bankruptcy court, the familiar summary judgment standard established in Federal Rule of Civil Procedure 56 applies. See Fed. R. Bankr. P. 7056; *North Slope Borough v. Rogstad (In re Rogstad)*, 126 F.3d 1224, 1227 (9th Cir. 1997). Summary judgment is proper when “the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of

law.” Fed. R. Civ. P. 56(c). An issue is “genuine” only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute is “material” only if it could affect the outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). The party moving for summary judgment has the burden of showing the absence of a genuine issue of material fact. *Id.* at 256-57, 106 S.Ct. 2505. The court must view all the evidence in the light most favorable to the nonmoving party. *County of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001).

In response to a properly submitted summary judgment motion, the burden shifts to the opposing party to set forth specific facts showing that there is a genuine issue for trial. *Henderson v. City of Simi Valley*, 305 F.3d 1052, 1055-56 (9th Cir. 2002). The nonmoving party “may not rely on denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery material, to show that the dispute exists.” *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991).

A court “generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented.” *Agosto v. INS*, 436 U.S. 748, 756, 98 S.Ct. 2081, 56 L.Ed.2d 677 (1978). “[A]t the summary judgment stage the judge’s function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue

for trial.” *Anderson*, 477 U.S. at 249, 106 S.Ct. 2505.

Gugino v. Wells Fargo Bank Northwest, N.A. (In re Lifestyle Home Furnishing, LLC), 10.1 IBCR 23, 23 (Bankr. D. Idaho 2010) (quoting *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008).³

Analysis and Disposition

In his amended complaint, Plaintiff alleges three distinct claims for relief. Defendants argue none of those claims have merit. As requested in Defendants’ motion, the Court considers whether summary judgment is appropriate as to each claim in turn.

1. Avoidance of the Transfer under § 544(a).

Plaintiff first seeks to avoid the transfer of the deed and title to the Property from Debtors to Defendants under a Bankruptcy Code provision

³ Although Federal Rule of Civil Procedure was substantially amended effective December 1, 2010, the Advisory Committee Notes provide that the “standard for granting summary judgment remains unchanged. The language of subdivision (a) continues to require that there be no genuine dispute as to any material fact and that the movant be entitled to judgment as a matter of law. The amendments will not affect continuing development of the decisional law construing and applying these phrases.”

known affectionately to bankruptcy trustees as the “strong arm clause.”

Section 544(a) provides, in relevant part, that

(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by —

* * *

(3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfect such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

11 U.S.C. § 544(a)(3).

This statute grants a bankruptcy trustee the power to avoid any transfer that could be defeated by a hypothetical bona fide purchaser (“BFP”) for value under state law. *Chase Manhattan Bank, USA, N.A. v. Taxel (In re Deuel)*, 594 F.3d 1073, 1076 (9th Cir. 2010). State law governs the rights of Plaintiff, as a hypothetical BFP, as against Defendants.

Wonder-Bowl Props. v. Kim (In re Kim), 161 B.R. 831, 834 (9th Cir. BAP 1993); *Rainsdon v. Mullen (In re Mullen)*, 402 B.R. 353, 357 (Bankr. D. Idaho 2008) (quoting *Michael v. Martinson (In re Michael)*, 49 F.3d 499, 501 (9th Cir. 1995)). Key to the instant case, however, is that under the plain wording of the statute, the trustee's hypothetical BFP status is measured *as of the commencement of the case*.

Plaintiff apparently contends that because the RTO Agreement and the Contract failed to comply with Idaho's statute of frauds for real property agreements, both contracts would be unenforceable as against a hypothetical BFP. *Ray v. Frasure*, 200 P.3d 1174, 1177 (Idaho 2009) (citing *Hoffman v. S V Co., Inc.*), 628 P.2d 218, 221 (Idaho 1981)); *Ricks v. Kastera, LLC (In re Ricks)*, 433 B.R. 806, 818 (Bankr. D. Idaho 2010). However, when viewed as of the petition date, the agreement between Debtors and Defendants memorialized in the RTO Agreement and Contract was a completed transaction.

When Debtors filed their petition, § 541(a) operated to create an estate which included all of their interests in property. However, as the

transaction between Debtors and Defendants had been completed, and the deed had been delivered and properly recorded, Debtors no longer held any cognizable interest in the Property on the petition date, and thus it did not become property of their bankruptcy estate. *See Murphy v. Wray (In re Wray)*, 01.1 IBCR 15, 18 (Bankr. D. Idaho 2001) (“the mere filing of bankruptcy does not expand [Debtors’ property] rights beyond what existed under applicable nonbankruptcy law at filing.”). Moreover, because the deed had been recorded, notice had been given to the world about the change in ownership of the Property. Under Idaho law, a transfer of an interest in real property is perfected as against a BFP of that property when the instrument of conveyance is properly recorded. Idaho Code § 55–812; *Estate of Skvorak v. Security Union Title Inc. Co.*, 89 P.3d 856, 862 (Idaho 2004); *Sun Valley Land and Minerals, Inc. v. Burt*, 853 P.2d 607, 612 (Idaho App. 1993). Thus, Plaintiff may not utilize his status as a hypothetical BFP to unwind the completed transaction under these facts.

In other words, because Plaintiff may not use § 544(a)(3) to avoid Debtors’ transfer of the warranty deed to Defendants, the Court will grant

summary judgment to Defendants on this claim for relief.

2. Avoidance of the Transfer Under § 547(b).

In the alternative, Plaintiff argues that he may avoid the transfer of the Property from Debtors to Defendant as a preference. The Code allows a trustee to recover transfers made by debtors to their favored creditors shortly before filing for bankruptcy relief:

[T]he trustee may avoid any transfer of an interest of the debtor in property —

- (1) to or for the benefit of a creditor;
- (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- (3) made while the debtor was insolvent;
- (4) made-
 - (A) on or within 90 days before the date of the filing of the petition; .
 - ..
 -
- (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).⁴

Here, many of the elements required to establish an avoidable preference are undisputed. For example, there is no doubt that, via the warranty deed, Debtors made a “transfer” of their remaining interest in the Property to Defendants. Under Idaho law, the transfer of legal title to the Property from Debtors to Defendants occurred when they delivered the deed to them with the intent that the deed be operative. *Barmore v. Perrone*, 179 P.3d 303, 307-08 (Idaho 2008); *Defendant A. v. Idaho State Bar*, 978 P.2d 222, 224-25 (Idaho 1999). Moreover, this transfer occurred within 90 days of the filing of Debtor’s bankruptcy petition.⁵ § 547(e)(1)(A)

⁴ While Debtors retained legal title to the Property until the deed was delivered to Defendants, they had arguably transferred the beneficial interest in the Property to Defendants when the RTO Agreement was executed, and then finally recorded, in 1998 and 2000, respectively. Given that these events occurred years prior to Debtors’ bankruptcy filing, any transfer of their beneficial interest would not be avoidable by Debtors’ trustee under § 547(b).

⁵ Since Defendants were relatives of the Debtors, the preference “reach back” period for this transaction was actually one year. *See* § 547(b)(4)(B) (preference period is one year prior to petition date if transfer is to an “insider”); § 101(31)(A)(i) (definition of insider includes relatives of an individual debtor); § 101(45) (definition of relative includes those related to debtor by affinity or consanguinity within third degree).

(transfer of real property occurs for preference purposes when it is enforceable as against a BFP); Idaho Code § 55-812 (in Idaho, transfer of real property is effective against a BFP when deed is recorded). In addition, under § 547(f), Debtors were “presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.” Finally, when the Court takes judicial notice of its own docket and, in particular, reviews Debtors’ schedules of debts and assets filed in this chapter 7 case,⁶ it appears that Defendants’ receipt of the “full value” of the Property via the warranty deed enabled them to receive more than they would have received had that transfer not been made, and had Defendants been required to participate pro-rata in distributions to creditors in the bankruptcy case.⁷

⁶ Although a copy of the Debtors’ bankruptcy petition and schedules were not made a part of the record in the adversary proceeding, under Fed .R. Evid. 201(c), the Court may take judicial notice of its official docket, and under Fed. R. Evid. 801(d)(2), it may consider the statements made in Debtors’ schedules as admissions. *In re Schweizer*, 354 B.R. 272, 278 n.3 (Bankr. D. Idaho 2006); *In re Moore*, 01.4 I.B.C.R. 147, 149 n.7 (Bankr. D. Idaho 2001).

⁷ Debtors’ Summary of Schedules indicates \$232,321.31 in liabilities and \$198,814.70 in assets. BK Case No. 10-40937-JDP Dkt. No. 1. In addition, most of Debtors’ assets are exempt from liquidation.

However, for preference purposes, what is less clear on these facts is whether the transfer of title to the Property from Debtors to Defendants was, in the words of the Code, made “on account of an antecedent debt” owed by Debtors to Defendants as required by §§ 547(b)(1) and (2). Resolution of this issue implicates a question of law, not fact. *Upstairs Gallery, Inc. v. Macklowe West Dev. Co., L.P. (In re Upstairs Gallery, Inc.)*, 167 B.R. 915, 917 (9th Cir. BAP 1994).

Plaintiff contends that when Defendants paid off the Zion’s Bank loan in October 2009, Debtors at that point became obliged to tender an executed warranty deed for the Property to Defendants. When they did not do so for several months, Plaintiff contends a cause of action for breach of contract for money damages or specific performance arose; in Defendants’ favor as against Debtors. Thus, when Debtors ultimately fulfilled their duty to deliver a deed to Defendants in April, 2010, they effectively satisfied Defendants’ claim against them.

Was Debtors’ delivery of the deed to Defendants, in legal effect, a transfer to creditors on account of an antecedent debt? The Bankruptcy

Code defines “creditor” to include “an entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor” § 101(10)(A). Debtors’ filing of their voluntary chapter 7 petition constituted an order for relief. § 301(b). A “claim” for bankruptcy purposes is, in turn, defined as a:

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) the right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. § 101(5). Finally, “debt” is defined by the Code as “liability on a claim.” § 101(5). Because the definition of claim is so broad, generally speaking, “all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in [a] bankruptcy case” *In re Upstairs Gallery, Inc.*, 167 B.R. at 917-18 (quoting *In re Vasu Fabrics, Inc.*, 39 B.R. 513, 517 (Bankr. S.D.N.Y. 1984)).

In this case, the RTO Agreement makes clear that when Defendants completed payments to Zion's Bank, an obligation arose for Debtors to transfer title to the Property to Defendants. Had Debtors not given them the deed before they filed their bankruptcy petition, Defendants would have held a potential claim in Debtors' bankruptcy case for breach of the parties' contract. Under Idaho law, Debtors' failure to deliver title under these facts may have subjected Debtors to Defendants' claims for both money damages, and for specific performance of the parties' contract. *Kessler v. Tortoise Dev., Inc.*, 1 P.3d 292, 298 (Idaho 2000) (damages may be inadequate in an action for breach of a real estate purchase and sale agreement due to the uniqueness of land, so the equitable remedy of specific performance may be appropriate). Accordingly, Debtors were indebted to Defendants at the time they received the deed from Debtors. The converse is also true: Defendants were creditors of Debtors until title to the Property was finally transferred to them.

But while Debtors were technically "indebted" to Defendants to transfer title, was this an "antecedent" debt for preference purposes? In

order to make this determination, the Court must consider when the debt was incurred. *Krommenhoek v. Estate of Pfankuch Food Services, Inc. (In re Pfankuch)*, 393 B.R. 18, 25 (Bankr. D. Idaho 2008).

As this Court has explained, “[a] debt is incurred when the debtor first becomes legally bound to pay.” *In re Pfankuch*, 393 B.R. at 25 (quoting *In re CHG Int’l, Inc.*, 897 F.2d at 1486, *abrogated on other grounds by Union Bank v. Wolas*, 502 U.S. 151 (1991)).

Pursuant to the terms of the RTO Agreement, Debtors were obligated to transfer a warranty deed and clear title to the Property “[w]hen [Defendants] have paid off the mortgage at Zions National Bank.” There appears to be no dispute that Defendants paid off the Zion’s Bank mortgage some time in October, 2009. Therefore, Debtors were legally bound to transfer the deed to Defendants at that time. As a result, Debtors’ April 2010 delivery of the deed constituted payments on an antecedent debt owed to Defendants before the transfer was made.

In sum, the facts to satisfy the elements of an avoidable preference seem to have been established in this action. Thus, Defendants’ motion for

summary judgment on Plaintiff's claim for relief under § 547(b) will be denied.

3. Avoidance of the the Transfer Under § 548(a).

Finally, Plaintiff alleges that Defendants were the recipients of a constructively fraudulent transfer from Debtors, avoidable by a trustee under powers granted to him by both § 548(a) and § 544(b).

Section 548(a) provides as follows:

(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 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—

...

(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[.]

11 U.S.C. § 548(a)(1)(B).⁸ As can be seen, to avoid a transfer under this provision, Plaintiff as trustee must show that a “transfer” of Debtors’ property occurred within two years of the filing of the bankruptcy petition; that the debtor received less than “reasonably equivalent value in exchange for the transfer”; and that the transfer occurred either while the debtor was insolvent, or that the debtor was rendered insolvent as a result of the transfer. *Id.* Plaintiff bears the burden of proving all these elements by a preponderance of the evidence. *Jordan v. Kroneberger (In re Jordan)*, 392 B.R. 428, 440, 447 (Bankr. D. Idaho 2008) (citing *Krommenhoek v. Natural Res. Recovery, Inc. (In re Treasure Valley Opportunities, Inc.)*, 166 B.R. 701, 703 (Bankr. D. Idaho 1994)).

As noted above, Debtors’ grant of a warranty deed on the Property in favor of Defendants constitutes a transfer for purposes of the Code. As this transfer occurred less than two months prior to the bankruptcy filing,

⁸ Section 548(a)(1)(A) empowers a trustee to avoid a transfer intended by the debtor to hinder, delay or defraud a creditor. However, Plaintiff has not alleged that Debtors acted with fraudulent intent, and the Court will consider only whether the transfer of the deed constitutes a “constructively fraudulent” transfer under § 548(a)(1)(B).

it was clearly within the time frame provided in § 548(a).

Plaintiff must also demonstrate that Debtors received less than “reasonably equivalent value in exchange for the transfer.” In his briefing, Plaintiff simply does not address this issue. Instead, the Court surmises⁹ that he contends that the RTO Agreement and the Contract are unenforceable as a matter of law, and thus Debtors’ transfer of the warranty deed was, in essence, a transfer by Debtors to Defendants for no consideration. In the alternative, perhaps Plaintiff thinks an avoidable transfer occurred because Debtors delayed the transfer of the warranty deed to Defendants by some eight months, such that the transfer of the Property from Debtors to Defendants essentially “settled” their cause of action for breach of contract. The Court consider each theory below.

*A. Statute of Frauds.*¹⁰

⁹ Of course, the Court is reluctant to speculate about Plaintiff’s legal arguments. It is Plaintiff’s responsibility to clearly explain the factual and legal basis of his claims against Defendants. The Court undertakes this analysis in this case solely to give Plaintiff “the benefit of the doubt”, and in the interests of justice and prompt resolution of this action.

¹⁰ Section 558 provides that any defenses available to Debtors are likewise available to Trustee. The Court concludes that the application of § 558 is not

Perhaps Plaintiff contends that Debtors transferred the Property to Defendants for no consideration because the parties' contracts supporting the transfer were unenforceable as a matter of law due to their failure to satisfy the statute of frauds. Assuming this is Plaintiff's position, Defendants argue that the statute of frauds is inapplicable to this transaction because the RTO Agreement and Contract had been wholly, or at least partially, performed.

The state statute of frauds applicable to real estate transfers is found in Idaho Code § 9-503, which provides:

No estate or interest in real property, other than for leases for a term not exceeding one (1) year, nor any trust or power over or concerning it, or in any manner relating thereto, can be created, granted, assigned, surrendered or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting,

appropriate here, because Plaintiff is using the statute of frauds, not as a defense to any claim, but offensively in an attempt to undo Defendants' purchase of the Property. Section 558 is not an avoidance mechanism in its own right, but rather allows Plaintiff, as trustee, to utilize defenses personal to Debtors on behalf of the estate. *In re McMurdie*, 448 B.R. 826, 829 n.6 (Bankr. D. Idaho 2010).

assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized by writing.

Idaho courts have construed this statute to not only require that contracts for the sale of real property be in writing, but that they also include other essential components. Relevant here, for example,

While the Idaho statutes do not specifically require a description of real property in the instrument of conveyance, Idaho courts have always required a description of the property or a reference to extrinsic evidence which describes the property being conveyed in order to satisfy the statute of frauds. In [*Ray v. Frasure*], the Idaho Supreme Court stressed that such a property description must “adequately describe the property so that it is possible for someone to identify ‘exactly’ what property the seller is conveying to the buyer.”

In re McMurdie, 448 B.R. at 830 (quoting *Ray*, 200 P.3d at 1178) (citing *Garner v. Bartschi*, 80 P.3d 1031, 1036 (Idaho 2003)). In *Ray*, the Idaho Supreme Court reaffirmed the standard explained in *Garner* that “[a] description contained in a deed will be sufficient [under Idaho’s statute of frauds] so long as quantity, identity or boundaries of property can be determined from the face of the instrument, or by reference to extrinsic

evidence to which it refers.” *Ray*, 200 P.3d at 1178 (quoting *Garner*, 80 P.3d at 1036).

In this case, neither the RTO Agreement or the Contract include any legal description for the Property; each contain only a street address. The Idaho Supreme Court in *Ray* specifically held that “a property description in a real estate contract consisting solely of a physical address does not satisfy the statute of frauds.” *Ray*, 200 P.3d at 1177; *see also In re McMurdie*, 448 B.R. at 830. Accordingly, under the Idaho case law, the RTO Agreement and Contract would likely not satisfy the requirements of the statute of frauds. In Idaho, “[a]greements for the sale of real property that fail to comply with the statute of frauds are unenforceable both in an action at law for damages and in a suit in equity for specific performance.” *Ray*, 200 P.3d at 1177 (citing *Hoffman*, 628 P.2d at 221); *In re Ricks*, 433 B.R. at 818.

B. The Part Performance Exception to Idaho’s Statute of Frauds.

The Idaho statute of frauds for transfers of real property “must not be construed . . . to abridge the power of any court to compel the specific performance of an agreement, in case of part performance thereof.” Idaho

Code § 9-504; *see also* *Simons v. Simons*, 11 P.3d 20, 23 (Idaho 2000); *Jolley v. Clay*, 103 Idaho 171, 177, 646 P.2d 413, 419 (Idaho 1982); *Hoffman v. S V Co.*, 102 Idaho 187, 191, 628 P.2d 218, 222 (Idaho 1981). Under the doctrine of part performance, “when the parties to an agreement fail to reduce the agreement to writing, or otherwise fail to satisfy the statute of frauds, the agreement ‘may nevertheless be specifically enforced when the purchaser has partly performed the agreement.’” *Bauchman-Kingston P’ship, LP v. Haroldsen*, 233 P.3d 18, 23 (Idaho 2008) (citing *Chapin v. Linden*, 162 P.3d 772, 775 (Idaho 2007)); *Simons*, 11 P.3d at 23.

While Defendants insist that the parties’ performance would allow them to enforce their rights under the RTO Agreement and Contract, Plaintiff contends that the doctrine of part performance is only applicable to save oral contracts, and is of no help to Defendants under these facts because the parties’ contracts were written. The Court disagrees. While it is correct that most of the reported Idaho cases applying the doctrine of

part performance involve oral contracts,¹¹ this exception to the statute of frauds has not been so limited. Indeed, the Idaho Supreme Court has considered a part performance claim in the context of a written contract at least twice. *Simons*, 11 P.3d at 23; *Bauchman-Kingston P'ship*, 233 P.3d at 20.

In *Simons*, like here, the parties' real estate contract failed to satisfy the statute of frauds due to an inadequate property description. 11 P.3d at 23-24. However, the court did not invalidate the contract. Where one of the parties had agreed to convey certain property in exchange for specific consideration, and the other party had indeed delivered that consideration, the court decided that the contract could be enforced. *Id.* at 23.

Bauchman-Kingston also involved a real estate contract, unenforceable under the Idaho statute of frauds due to an inadequate property description. 233 P.3d at 20. However, in that case, the parties had not agreed upon the consideration to support the sale, and the Idaho

¹¹ See, e.g., *Dunagan v. Dunagan*, 213 P.3d 384 (Idaho 2009); *Chapin v. Linden*, 162 P.3d 772 (Idaho 2007); *Corder v. Idaho Farmway, Inc.*, 986 P.2d 1019 (Idaho App. 1999); *Hinkle v. Winey*, 895 P.2d 594 (Idaho App. 1995); *Bear Island Water Ass'n, Inc. v. Brown*, 874 P.2d 528 (Idaho 1994); *Mikesell v. Newworld Dev. Corp.*, 840 P.2d 1090 (Idaho App. 1992).

Supreme Court distinguished *Simons* and declined to enforce the contract under the part performance exception.

Curiously, Plaintiff cites *Ray, supra*, for support. However, the questions decided by the Idaho Supreme Court in *Ray* were “whether a physical address in a real estate contract sufficiently describes the property for purposes of the statute of frauds,” and whether the district court had correctly ruled concerning an alleged oral modification of the closing date and breach of the contract. 200 P.3d at 1176. While it appears the prospective purchaser of the property in *Ray* did fully perform its obligations under the agreement, there is no discussion in the decision of the doctrine of part performance as an exception to the statute of frauds. Because of the doctrine is not mentioned, it appears that it was never raised in the trial court.

Based upon this review of the Idaho case law, the Court concludes that the doctrine of part performance may apply to save a written contract for the transfer of real estate which otherwise fails to satisfy the statute of frauds. This seems sensible, since if part performance is available to

enforce an oral agreement, there is little reason to ignore the doctrine in cases where the parties have at least attempted to reduce their agreements to writing, albeit incompletely, and where one party acted upon that agreement.¹²

C. *Application of the Part Performance Doctrine to the Undisputed Facts.*

The Court concludes that the part performance exception to Idaho's statute of frauds applies in favor of Defendants under the facts presented here.

Both the RTO Agreement and Contract indisputably evidence the parties' intent that the Property be transferred from Debtors to Defendants

¹² As discussed above, the Idaho Supreme Court has held that the doctrine of part performance is implicated "when the parties to an agreement fail to reduce the agreement to writing, *or otherwise fail to satisfy the statute of frauds . . .*" *Bauchman-Kingston*, 233 P.3d at 23 (citing *Chapin v. Linden*, 162 P.3d 772, 775 (Idaho 2007) (emphasis supplied). On the other hand, the Court acknowledges language in a later decision explaining that "Idaho recognizes the doctrine of partial performance, which is an exception to the statute of frauds that permits a court to compel specific performance of an agreement *not in writing* that has been partly performed." *Dunagan*, 213 P.3d at 386 (citing *Simons and Bear Island Water*, 874 P.2d at 533) (emphasis supplied). However, as both *Simons* and *Bear Island* involved written, not oral, agreements, the Court presumes that the Idaho Supreme Court did not intend to limit the availability of the doctrine of part performance to oral contracts by its dicta in *Dunagan*.

when the mortgage was paid off. There is also no dispute that the parties acted in accordance with the terms of those contracts. After execution of the RTO Agreement, Defendants took possession of the Property, living in and caring for the house for several years, all the time while making the monthly mortgage payments directly to Zions Bank. After some delay, Debtors complied with the contracts by executing and delivering a deed to the Property after Defendants had satisfied the mortgage. As can be seen, there is no question here concerning the parties' "part performance"; this is a case where both parties have fully performed their contracts.

Accordingly, if indeed Plaintiff contends that Debtors made a constructively fraudulent transfer to Defendants because the underlying contracts were unenforceable under the statute of frauds, the Court concludes as a matter of law that this claim cannot be sustained.

D. Transfer in Satisfaction of a Claim.

Alternatively, if Plaintiff alleges that Debtors transferred the Property in satisfaction of a claim Defendants had against them for breach of contract, Plaintiff still has the burden to prove that the transfer was for

less than reasonably equivalent value.

No evidence has been submitted to the Court on this question. The absence of proof that the transfer to Defendants of the deed was not “reasonably equivalent value” is a problem for Plaintiff, because, as the Ninth Circuit recently reminded us:

[There is a] shifting burden of proof [which governs] motions for summary judgment under Federal Rule of Civil Procedure 56. The moving party initially bears the burden of proving the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Where the non-moving party bears the burden of proof at trial, the moving party need only prove that there is an absence of evidence to support the non-moving party's case. *Id.* at 325. Where the moving party meets that burden, the burden then shifts to the non-moving party to designate specific facts demonstrating the existence of genuine issues for trial. *Id.* at 324. This burden is not a light one. The non-moving party must show more than the mere existence of a scintilla of evidence. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). The non-moving party must do more than show there is some “metaphysical doubt” as to the material facts at issue. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). In fact, the non-moving party must come forth with evidence from which a jury

could reasonably render a verdict in the non-moving party's favor. *Anderson*, 477 U.S. at 252. In determining whether a jury could reasonably render a verdict in the non-moving party's favor, all justifiable inferences are to be drawn in its favor. *Id.* at 255.

In re Oracle Corp. Sec. Litigation, 627 F.3d 376, 387 (9th Cir. 2010); see also *In re Pfankuch*, 393 B.R. at 21-22.

Defendants, as the moving party, had the initial burden to show the absence of a genuine issue of material fact concerning Plaintiff's constructive fraud claim. They have done so; both parties agree that there are no disputed genuine issues of fact. Consequently, since Plaintiff bears the burden of proof at trial, the burden shifts to Plaintiff to "designate specific facts demonstrating the existence of genuine issues for trial," and in fact, Plaintiff "must come forth with evidence from which a jury could reasonably render a verdict in [his] favor." *Id.*

Plaintiff has not satisfied his burden. Defendants paid off Debtors' mortgage to Zions Bank, and in return, received title to the Property from Debtors. The Court has no evidence before it from which it could

reasonably infer that the amounts paid by Defendants to Zions Bank was somehow less than the debt relief Debtors received in exchange for the deed to the Property.¹³

If Plaintiff is contending that Debtors transferred the deed in order to satisfy Defendants' demands because they intended to sue Debtors for breach of contract, Plaintiff's showing also fails. Presumably Defendants' claim for damages against Debtors would be measured in large part by the sums Defendants paid to Zion's Bank. As a result, the question again becomes whether Debtors' satisfaction of that claim for damages by tender of the deed was for less than reasonably equivalent value. As noted above, Plaintiff has submitted no evidence in that regard.

On the other hand, if Defendants' potential breach of contract action against Debtors was one in equity for specific performance, then the satisfaction of that judgment would be exactly what Debtors gave the Defendants here: the deed to the Property. While the Court is mindful

¹³ The Code provides that "value" under this section can mean "satisfaction or securing of a present or antecedent debt of the debtor". 11 U.S.C. § 548(d)(2)(A).

that the issue of whether Debtors received a reasonably equivalent value is analyzed from the point of view of their creditors, *Jordan v. Kroneberger (In re Jordan)*, 392 B.R. 428, 441 (Bankr. D. Idaho 2008) (citing *Hopkins v. D.L. Evans Bank (In re Fox Bean Co.)*, 287 B.R. 270, 281 (Bankr. D. Idaho 2002), it would be a difficult case indeed for Plaintiff to contend that Debtors received less than reasonably equivalent value under those circumstances.

In addition, under § 548(a), Plaintiff must show that Debtors were either insolvent on the date the transfer to Defendants was made, or that they became insolvent as a result of the transfer. Plaintiff has also failed to offer any evidence to support this proposition.

Because Plaintiff has not met his burden of proof under Civil Rule 56, a grant of summary judgment to Defendants is proper on the § 548(a) claim.

4. Avoidance of the Transfer Under Idaho Code § 55-913.¹⁴

¹⁴ Plaintiff alleges a fraudulent transfer under Idaho Code § 55-910, *et seq.* However, that section merely includes the definitions governing Idaho's fraudulent transfer statutes. Idaho Code § 55-913 designates the transfers deemed fraudulent by the Idaho Legislature.

The analysis in the preceding section would also apply to Plaintiff's claims for relief under § 544(b),¹⁵ incorporating Idaho Code § 55-913, which provides:

(1) A transfer made or obligation incurred by a debtor is fraudulent 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:

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

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

1. 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
2. intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond

¹⁵ Section 544(b) enables a bankruptcy trustee to avoid any transfer of property that an unsecured creditor with an allowable claim could have avoided under applicable state law. *Decker v. Tramiel (In re JTS Corp.)*, 617 F.3d 1102, 1111 (9th Cir. 2010); *Magic Valley Evangelical Free Church, Inc. v. Fitzgerald (In re Hodge)*, 220 B.R. 386, 389 n.1 (D. Idaho 1998).

his or her ability to pay as they became due.

Plaintiff does not allege that Debtors transferred the Property to Defendants in an attempt to intentionally defraud their creditors. Again, Plaintiff presumably contends that a constructively fraudulent transfer occurred. But even so, as explained above, Plaintiff has presented no facts to show that the transfer from Debtors to Defendants occurred without reasonably equivalent value in exchange. Thus, Defendants are also entitled to a summary judgment on this issue.

Conclusion

Plaintiff may not use § 544(a) to avoid the Debtors' transfer of title to the Property to Defendants because on the petition date, the transaction had been completed and Debtors no longer had any interest in the Property. Accordingly, summary judgment will be granted to Defendants on this claim for relief.

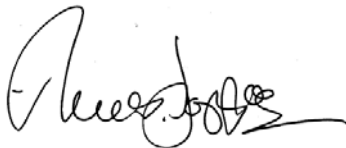
However, the Court concludes that the facts in the record support Plaintiff's argument that the transfer of the title to the Property by Debtors

to Defendants was an avoidable § 547(b) preference. Defendants' summary judgment motion will be denied on this claim.

Finally, the Court grants summary judgment to Defendants on Plaintiff's constructive fraudulent transfer claims, under both § 548(a) and Idaho law.

A separate order will be entered.

Dated: October 3, 2011



Honorable Jim D. Pappas
United States Bankruptcy Judge