

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

WILLIAM BELL,
t/a MARCRIS INVESTMENTS
Plaintiff,

v.

AARON WESLEY WYATT, and
WILLIAM BERNICKER
Defendants.

: APRIL TERM, 2003

: No. 3225

:

: Commerce Program

: Control No. 031526

ORDER

AND NOW, this 23rd day of June 2005, upon consideration of defendants' Motions for Summary Judgment, the responses in opposition, the respective memoranda, all other matters of record, and in accord with the Opinion being filed contemporaneously with this Order, it hereby is **ORDERED** that said Motions are **Granted** and plaintiff's Complaint is **Dismissed**.

BY THE COURT:

ALBERT W. SHEPPARD, JR., J.

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OPINION

ALBERT W. SHEPPARD, JR., J. June 23, 2005

Before the court are defendants’ Motions for Summary Judgment. For the reasons discussed, the Motions are granted, and the Complaint dismissed.

BACKGROUND

On November 18, 1998, defendant, William J. Bernicker (“Bernicker”), signed a lease with plaintiff, Willaim Bell (“Bell”), for commercial property located near Second and Washington Streets in Philadelphia (the “Lease”). Bernicker was a shareholder of Bernicker Motor Corporation, a car dealership that operated at Broad and Federal Streets in Philadelphia.

On April 9, 1996, in a matter unrelated to the Lease, Bernicker and Bernicker Motors, *inter alia*, filed suit against Michael Byrne for libel, slander and misrepresentation in a civil

action styled *Bernicker, et al. v. Byrne et al.*, April Term 1996, No. 1204 (C.C.P. Phila). In April 1999, a jury returned a verdict against Byrne in the amount of \$1,981,000.00 (the “Byrne Judgment”). On May 28, 1999, the Bernickers assigned and conveyed their interests in the Byrne Judgment to defendant, Aaron Wesley Wyatt (“Wyatt”), in exchange for \$25,000.00 in stated consideration and for debt forgiveness. Subsequently, on August 5, 1999, Byrne filed a petition for bankruptcy in the United States Bankruptcy Court for the Eastern District of Pennsylvania, under Chapter 11 of the Bankruptcy Code (“Byrne Bankruptcy”).

Throughout the Byrne lawsuit and until 2001, Bernicker maintains that he remained in compliance with the Lease. Bell has produced no evidence to the contrary. However, in 2001, Bernicker began experiencing problems meeting his obligations under the Lease. On June 11, 2001, Bell confessed judgment pursuant to the Lease, alleging that Bernicker failed to tender the appropriate rent. This judgment was subsequently vacated by agreement. On September 12, 2001, Bell again confessed judgment against Bernicker in the amount of \$118,347.60 in a civil action styled *William Bell d/b/a Marcris Investments v. William Bernicker*, September Term 2001, No. 1073 (C.C.P. Phila) (the “Bell/Bernicker Judgment”). Bernicker moved to strike this judgment, which was granted on November 1, 2004, at which time the Honorable Annette Rizzo dismissed the Bell/Bernicker Judgment with prejudice. On March 15, 2005, our Superior Court quashed Bell’s appeal of Judge Rizzo’s Order, rendering it final.

Bell commenced this instant action in April 2003, which included numerous counts against several defendants. This court sustained defendants’ Preliminary Objections, after which, the only Counts remaining were against defendants Bernicker and Wyatt for fraudulent conveyance and equitable trust. Thereafter, Bell filed an Amended Complaint, asserting only a claim for fraudulent conveyance against these defendants in connection with the Bell/Bernicker Judgment and its assignment. Defendants have moved for summary judgment as to this claim.

DISCUSSION

Fraudulent conveyance actions in Pennsylvania are governed by the Pennsylvania Uniform Fraudulent Transfer Act (“PUFTA”), 12 Pa.C.S.A. § 5101, *et seq.* The fraudulent transfer statute is designed to protect creditors from debtors who might try to shelter assets by sham transactions, thereby depriving the creditor of his ability to collect from the debtor. Id.

“Summary judgment is proper when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits demonstrate that there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Pa.R.C.P. 1035.2; Horne v. Haladay, 1999 Pa. Super. 64, 728 A.2d 954 (1999). Here this court finds that Bell has failed to demonstrate a valid fraudulent transfer claim.

First, Bell is not a “present” creditor, as defined by PUFTA, as any claim he allegedly possessed did not arise until after the transfer at issue. This provision of the statute applies only to claims which “arose before the transfer was made...” 12 Pa. C.S.A. § 5105 (emphasis added). Clearly, this is not the case at bar. The Bell/Bernicker Judgment was entered on September 12, 2001. The alleged fraudulent conveyance was made several years earlier, on May 28, 1999. Thus, no cause of action exists under § 5105.

Bell likewise has no claim under 12 Pa. C.S.A. § 5104. Although § 5104 protects future creditors from fraudulent transfers, there are limits on the rights of a future creditor to challenge a transfer. The conduct giving rise to the Bell/Bernicker Judgment, involved a breach of the Lease in 2001. At the time of the transfer, Bernicker was just six months into a five-year leasehold with Bell and there has been no evidence presented which suggests that Bernicker was in violation of the Lease prior to 2001. Under Pennsylvania law, one may not be a “future creditor” unless his claim is reasonably foreseeable in the near or immediate future. *See Leopold v. Tuttle*, 378 Pa. Super. 466, 549 A.2d 151, 154 (1998); Koffman v. Smith, 453 Pa. Super. 15,

682 A.2d 1282, 1288 (1996). Bell has failed to demonstrate that Bernicker knew or reasonably should have known that the transfer at issue would impede his ability to make rent payments to Bell or otherwise interfere with his obligations under the Lease two years later. As such, no cause of action exists under § 5104.

Finally, a prerequisite to a fraudulent conveyance action is a “claim” against the debtor, which is defined by the statute as “[a] right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.” 12 Pa.C.S.A. § 5101. This court finds that Bell has failed to satisfy this prerequisite, as he did not have an underlying “claim” against either Bernicker or Wyatt. The only potential “claim” pled in the Complaint was the Bell/Bernicker Judgment. However, this “claim” was extinguished by Judge Rizzo’s November 1, 2004 Order dismissing the Bell/Bernicker Judgment with prejudice. As the Superior Court quashed the appeal on March 15, 2005, Judge Rizzo’s Order stands. Based on the foregoing, Bell cannot maintain a fraudulent transfer action against either of these Defendants because he has no “claim” under either 12 Pa.C.S.A. §§ 5104 or 5105.¹

¹ Bell argues that his “claim” arose when he and Bernicker entered into the Lease. This allegation, however, is unsupported by Pennsylvania law, the pleadings, as well as the record in this case.

CONCLUSION

For the reasons discussed, Summary Judgment is granted in favor of defendants and plaintiff's Complaint is dismissed. This Court will enter a contemporaneous Order consistent with this Opinion.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.