

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division**

IN RE:

Case No. 04-30343-BKC-SHF
Chapter 7 Proceeding

DENNIS ALAN BRAMMEIER,

Debtor _____ /

MICHAEL R. BAKST, Trustee in
Bankruptcy for Dennis Alan Brammeier,

Plaintiff,

v.

Adv. No. 06-1095-BKC-SHF-A

DELRAY STAKE & SHAVING, INC.,
a Florida Corporation and
SPACE COAST TRUSS, INC.,
a Florida Corporation ,

Defendants. _____ /

ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS

THIS CAUSE came on to be considered on June 27, 2006 upon the Defendant, Space Coast Truss Inc.'s Motion for Judgment on the Pleadings (C.P. 28) filed on May 23, 2006. On January 24, 2006, Michael R. Bakst, as trustee in bankruptcy for Dennis Alan Brammeier, filed a Complaint to

Avoid and Recover Fraudulent Transfers Pursuant to Florida Statutes § 726 and 11 U.S.C § 544 (C.P. 1). An Amended Complaint to Avoid and Recover Fraudulent Transfers Pursuant to Florida Statutes § 726 and 11 U.S.C. § 544 was filed on April 20, 2006(C.P. 21), whereby Count IV was removed. On May 8, 2006 a Second Amended Complaint to Avoid and Recover Fraudulent Transfers Pursuant to Florida Statute § 726 was filed (C.P. 22), removing allegations pertaining to 11 U.S.C. § 544 and leaving only 11 U.S.C. § 541 as the basis for which the trustee could bring a cause of action against defendant. After considering the defendant's Motion for Judgment on the Pleadings, arguments of counsel and for the reasons discussed below, defendant's Motion for Judgment on the Pleadings is **granted**.

The debtor, Dennis Alan Brammeier, commenced a voluntary Chapter 7 bankruptcy petition on January 26, 2004, Case No.: 04-30343-BKC-SHF. Michael R. Bakst, the plaintiff, is the duly appointed Chapter 7 trustee. The trustee alleges certain facts as set forth in the Second Amended Complaint. The debtor was the 50 percent owner in an entity known as ½ Mile Lumber Company, Inc. ("½ Mile"). The debtor also held an ownership interest in Delray, Stake and Shavings, Inc. ("DSS") which was located at the same address, and shared the premises, with ½ Mile. (2nd Am. Compl. ¶¶7, 8) In December, 2000, ½ Mile filed for Chapter 11 bankruptcy relief. At that time, the debtor was a shareholder of DSS along with Jonathan and Diane Legg, and Nicholas Ballas. (2nd Am. Compl. ¶¶9, 10). In 2001, this Court entered an Order in the ½ Mile bankruptcy granting the motion of ½ Mile to sell property free and clear of liens to Space Coast Truss, Inc. ("SCT"). On April 2, 2001, ½ Mile, through the President Dennis Alan Brammeier, the debtor, executed a Special Warranty Deed to SCT transferring ownership of the various parcels of real property of ½ Mile to SCT. (2nd Am. Compl. ¶ 15). As of April 6, 2001, SCT and DSS shared the premises previously

occupied by ½ Mile and DSS, and maintained business operations at that location. In September 2001, Brammeier and Ballas purchased the stock of DSS owned by Jonathan and Diane Legg. An outstanding note remained due to the Leggs for the stock purchase. Additionally, the sale and purchase documents warranted that the assets of DSS would not be sold while money was still owed to the Leggs for the purchase of their stock. (2nd Am. Compl. ¶ 19) In July 2003, Brammeier and Ballas failed to make the note payment to the Leggs. From August, 2003 through September, 2003, DSS through Brammeier, Ballas and counsel for DSS negotiated and drafted documents for the sale of the DSS real and personal property to SCT, culminating in a sale of the assets on September 17, 2003.

The Trustee contends that the combined 2002 tax assessed value of the assets that were sold from DSS to SCT for approximately \$770,000.00 was \$1,670,880. According to Brammeier's schedule I, Brammeier was employed with SCT for a period of thirty months, and consequently during the time which the assets were transferred by DSS to SCT. Additionally, the Trustee alleges that, pursuant to the debtor's 2002 tax return the debtor was creditor of DSS for shareholder loans in an amount in excess of \$827,573.00. As such, the Trustee claims to be a creditor of DSS for the full amount of any outstanding shareholder loans and seeks to recover the transfers of property from DSS to SCT to satisfy the shareholder loans. The action brought by the trustee against DSS and SCT in this adversary proceeding is pursuant to Fla. Stat. § 726 and 11 U.S.C. § 541 of the Bankruptcy Code.

SCT requests judgment based solely on the pleadings pursuant to Rule 12(c). "Judgment on the pleadings is appropriate when material facts are not in dispute and judgment can be rendered by looking at the substance of the pleadings and any judicially noticed facts." *Bankers Ins. Co. v. Florida Residential Prop. & Cas. Joint Underwriting Ass'n*, 137 F.3d 1293, 1295 (11th Cir. 1998). The facts

alleged in the complaint must be accepted as true and viewed in the light most favorable to the nonmoving party. *Id.*; see also *Scott v. Taylor*, 405 F.3d 1251, 1253 (11th Cir. 2005). Notably, matters outside of the pleadings are not considered in a determination under Fed R. Civ. P. 12(c). *Brown v. Brock*, 169 Fed. Appx. 579, 582 (11th Cir. 2006). It is the position of SCT that judgment on the pleadings is warranted in their favor since the trustee's claims are barred by the doctrine of *in pari delicto*. If an affirmative defense is clearly established by the pleadings, then a judgment on the pleadings is appropriate. *Bennett v. Parker*, 898 F.2d 1530, 1535, n.2 (11th Cir. 1990).

SCT argues that the trustee could not maintain a claim pursuant to 11 U.S.C. § 541(a), which provides that the debtor estate includes all legal or equitable interests of the debtor in the property as of the commencement of the case, since the affirmative defense of *in pari delicto* bars the recovery by the trustee due to the debtor's involvement in the sale of assets from DSS to SCT. Specifically, SCT points out that the allegations enumerated in the Second Amended Complaint demonstrate that Brammeier, the debtor, was an officer and principal shareholder of DSS and participated in the negotiations and effectuated the completion of the sale of DSS's assets to SCT. Therefore, because Brammeier was an active participant in the transfer of assets from DSS to SCT, Brammeier could not have a cause of action against SCT at the commencement of the petition. And since Brammeier could not have a cause of action at the commencement of the petition, neither could the trustee.

The trustee contends that the doctrine of *in pari delicto* is not applicable on this set of facts since the two parties to the alleged fraudulent transaction were DSS and SCT, not the debtor. As such, the trustee argues that the proper party against whom SCT could raise the *in pari delicto* defense would be DSS. The trustee also argues that *in pari delicto* is not applicable due to the nature of the claim that was brought. The trustee has sought, in part, to avoid the subject transfer of

property from DSS to SCT as being constructively fraudulent under Fla. Stat. § 726.106(1). As such, the transaction would be considered fraudulent only to the extent that the debtor was insolvent or rendered insolvent at the time of the transaction and not due to an intent by the debtor to hinder, delay, or defraud creditors. Therefore, it is the trustee's position that there is no culpable or wrongful conduct by either party in the transaction which consequently makes the *in pari delicto* defense inapplicable.

The Bankruptcy Code provides that property of the debtor estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). "Legal interests or equitable interests" include any causes of action the debtor may bring. *Official Comm. of Unsecured Creditors v. R.F. Lafferty & Co., Inc.*, 267 F.3d 340, 356 (3d Cir. 2001). The bankruptcy trustee succeeds to the rights of the debtor and has standing to bring any suit that the debtor could have brought outside bankruptcy. 11 U.S.C § 323; see also *Official Comm. of Unsecured Creditors of PSA, Inc. v. Edwards*, 437 F.3d 1145, 1149-50 (11th Cir. 2006). Additionally, the trustee's standing to bring suit is limited by certain defenses that could have been raised against the debtor, including the equitable defense of *in pari delicto*. Under the principle of *in pari delicto*, a plaintiff who has participated in the wrongdoing may not recover damages resulting from the wrongdoing. *Edwards* at 1151-1152.

A review of the case law identifies instances where the courts have refused to apply *in pari delicto* to bar recovery. *Scholes v. Lehman*, 56 F.3d 750, 754 (7th Cir. 1995) (refusing to apply *in pari delicto* to bar recovery for a receiver who brought a fraudulent conveyance action under Illinois law). The trustee has brought a cause of action against the defendant under Fla. Stat. § 726.105 pursuant to 11 U.S.C § 541(a)(1). The United States Eleventh Circuit Court of Appeals has

considered the difference between an action brought under 11 U.S.C. § 544(b) and 11 U.S.C. § 541(a) when considering the applicability of the defense of *in pari delicto*.

Fraudulent conveyances also are an exception to the general rule that the trustee takes the debtor estate as it is at the commencement of the bankruptcy. *Compare* 11 U.S.C. § 544(b) (providing that trustees may void prepetition fraudulent conveyances after the commencement of the bankruptcy) *with id.* § 541(a) (providing that the debtor estate includes “all legal or equitable interests of the debtor in the property *as of the commencement of the case*” (emphasis added))

Edwards, 437 F.3d 1145 at 1152.

In the case before the Court, it is evident from the pleadings, specifically the Second Amended Complaint, that the debtor had an ownership interest in and was a shareholder of DSS. (2nd Am. Compl. ¶¶ 8, 10). The sale of real and personal property from DSS to SCT was negotiated, in part, between Brammeier, Ballas and counsel for DSS, culminating in a sale of assets on September 17, 2003. (2nd Am. Compl. ¶ 27). Furthermore, the debtor was an employee of SCT during the time when the sale occurred between DSS and SCT. (2nd Am. Compl. ¶ 31). Furthermore, despite being a creditor of DSS for shareholder loans in an amount in excess of \$827,573.00, the debtor helped negotiate the sale of the assets of DSS for substantially less than their market value. (2nd Am. Compl. ¶¶ 29, 30, 32). As such, the Court is satisfied that the debtor was an equal participant in the alleged wrongdoing. Therefore, the trustee’s claims for relief are barred by the doctrine of *in pari delicto* and SCT’s Motion for Judgment on the Pleadings is **granted**.

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The Clerk of Court shall provide copies of this Order to all parties in interest.