

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
LEONA H. BOEHMER,) CASE NO. BK84-1461
)
DEBTOR) A85-115
)
LEROY ANDERSON, Trustee,)
)
Plaintiff)
)
vs.)
)
LEONA H. BOEHMER, JOAN ARENS)
and JANE KRUSE,)
)
Defendant)

MEMORANDUM OPINION

Trial on this adversary proceeding was held September 24, 1986. Appearing on behalf of the trustee was David Pedersen of North Platte, Nebraska. Appearing on behalf of the Commercial National Bank, Ainsworth, Nebraska, was Geri Clanton of Omaha, Nebraska. Appearing on behalf of the debtor and defendants was Donald Girard of North Platte, Nebraska.

This is a state law fraudulent conveyance action. Pursuant to 28 U.S.C. §157(c)(2) all parties agree, on the record, that the Bankruptcy Judge could enter a final appealable order.

Findings of Fact

Debtor filed a Chapter 7 bankruptcy petition on July 31, 1984. More than 1 year prior, on or about April 4, 1983, she conveyed her home to her daughters, additional defendants, and reserved a life estate to herself. The daughters gave no consideration for the transfer.

The debtor was 66 years old at the time of the transfer. She had, at the time of the transfer, and at the date of the bankruptcy petition, a vendor's interest in a land contract with a balance of \$78,750 subject to an assignment to a creditor securing a debt of approximately \$25,000.

Debtor had cosigned certain loans for her son and guaranteed others. Her son had serious financial problems in the spring of 1983. She kept his books. He filed bankruptcy a few months after she conveyed her property.

At the time of the transfer, debtor's assets included the "present value" of the land contract. This value would be determined according to the debtor's expert witness by reducing the outstanding balance by two percent per year for the 8 years remaining on the contract. The discounted value is, therefore, approximately \$67,000.

In addition, debtor's assets included the value of the house at the time of transfer. Using debtor's best estimate of the value of the house at the time of the transfer, it was worth \$30,000.

Therefore, the total assets of the debtor prior to the transfer amounted to \$97,000.

With regard to liabilities, the debtor admits in the pleadings and in the briefs that her liabilities prior to the transfer were at least \$100,828. Thus, the liabilities, without adding any contingent obligation on her son's debts, exceed her assets.

After the transfer, using the debtor's best estimate of value, she still had an interest in the real estate, although only a life estate, with a value of approximately \$20,000. Therefore, the transfer resulted in a reduction of her assets of approximately \$10,000.

The debtor was insolvent before the transfer and was insolvent after the transfer.

Conclusions of Law

Section 36-604 of Nebraska Revised Statutes (Reissue 1984) provides that every conveyance made by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his or her actual intent if the conveyance is made or the obligation is incurred without a fair consideration.

In this case, there was no consideration for the conveyance. The debtor conveyed the real estate as a gift to her relatives.

The facts as listed above show that the debtor was insolvent at the time of the conveyance. Therefore, the transfer was fraudulent. It should be set aside.

Decision

Judgment is entered in favor of the trustee and the conveyance by the debtor to her daughters is a fraudulent conveyance under the Nebraska Fraudulent Conveyance Act. The conveyance is set aside.

DATED: December 5, 1986.

BY THE COURT:


U.S. Bankruptcy Judge

Copies to:

David Pedersen, Attorney, P.O. Box 38, North Platte, NE 69103-0038

Geri Clanton, Attorney, 1800 First Nat'l. Center, Omaha, NE 68102

Donald Girard, Attorney, P.O. Box 1456, North Platte, NE 69103-1456