

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
HUGO WILLIAM HAASE,) CASE NO. BK78-L-444
)
BANKRUPT)
)
JOSEPH H. BADAMI,)
TRUSTEE IN BANKRUPTCY,)
)
Plaintiff)
)
vs.)
)
HUGO WILLIAM HAASE AND)
VERA M. HAASE,)
)
Defendants)

MEMOARNDUM OPINION

Plaintiff, Trustee in Bankruptcy of the Hugo William Haase bankruptcy estate, brought this action against Hugo William Haase, defendant-bankrupt, and Vera M. Haase, his wife, to set aside a fraudulent conveyance pursuant to §67d(2)[11 U.S. Code §107d(2)].

By a deed dated January 30, 1965, defendants took title to real estate located in Lincoln, Lancaster County, Nebraska, which they occupied continuously thereafter as their homestead. On September 20, 1978, the defendants as grantors conveyed by quitclaim deed their interest to Vera M. Haase only. On October 2, 1978, Hugo William Haase filed his voluntary petition in this court. It is the transfer of Mr. Haase's interest in the real estate to Mrs. Haase which the trustee attacks as a fraudulent conveyance.

The defendants admit that no consideration was paid to Mr. Haase in return for his conveyance of his interest in the property to Mrs. Haase. The evidence before me does indicate that the value of the property is approximately \$10,000.00. Assuming that Mr. Haase is the head of the family as defined by 40-115 R.R.S. 1943, his one-half interest in the homestead would be worth \$5,000.00. Accordingly, at least \$1,000.00 of his interest in the real estate would be non-exempt. See §67d(1)(a). In addition, I am unpersuaded by the evidence before me that Mrs. Haase made all payments on the real estate mortgage on the property during the occupancy of the premises. The evidence here is that both parties' incomes went into a joint checking account out of which payments and taxes were made.

Nevertheless, there are certain important elements in the evidence before me which are missing.

Sub-part (a) of §67d(2) requires that the transfer be at a time at which the bankrupt either was or was rendered thereby insolvent. There is no evidence introduced before me from which I can conclude that Mr. Haase was insolvent or was rendered insolvent at or by the conveyance. Similarly there is no evidence before me that there were creditors existing at the time of the conveyance.

Sub-part (b) is inapplicable to this situation because there is no evidence that Mr. Haase was either engaged in or about to engage in a business or transaction.

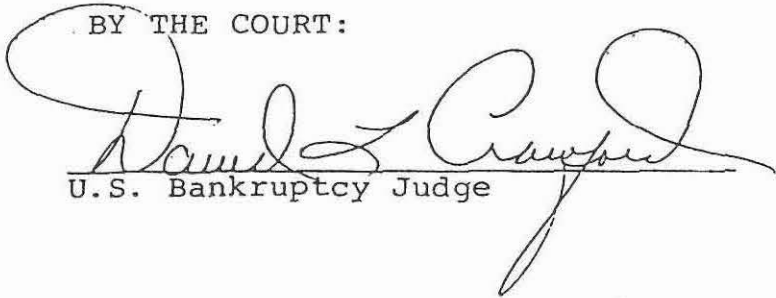
Sub-part (c) is similarly inapplicable because there is no evidence before me to indicate that Mr. Haase intended to incur or believed that he would incur debts beyond his ability to pay as they mature at the time of the conveyance.

Sub-part (d) is inapplicable because there is no evidence before me from which I can conclude that Mr. Haase acted with the requisite actual intent as distinguished from intent presumed in law to hinder, delay or defraud either existing or future creditors. The evidence here is that the parties were having marital difficulties and Mrs. Haase simply asked for the title to be placed in her name alone.

My finding is in favor of the defendants and against the plaintiff. A separate order is entered in accordance with the foregoing.

DATED: November 28, 1979.

BY THE COURT:


U.S. Bankruptcy Judge

Copies mailed to each of the following:

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