STATE OF MICHIGAN

COURT OF APPEALS

LAW OFFICES OF GERALD M. STEVENS,

Plaintiff-Appellant,

v

VALERIE B. LAROSE and GEORGE H. LAMBERT,

Defendants-Appellees,

and

SHIRLEY LAROSE,

Defendant.

UNPUBLISHED
December 30, 1997

No. 197299
Genesee Circuit Court
LC No. 94-026529-CK

Before: Saad, P.J., and Holbrook, Jr., and Doctoroff, JJ.

PER CURIAM.

In this action to set aside certain real estate conveyances as fraudulent, plaintiff moved for summary disposition following discovery. At the motion hearing, the trial court granted summary disposition in favor of defendants pursuant to MCR 2.116(I)(2). Plaintiff appeals as of right. We reverse and remand.

Plaintiff previously represented defendant Shirley Larose in a tort action. Shirley failed to keep in contact with plaintiff, who eventually withdrew as her counsel. On January 13, 1994, plaintiff filed a complaint against Shirley based upon quantum meruit for $21,240.89. Two days later, Shirley and William Booth (Shirley's former husband) executed a land contract, conveying real property located at 1818 Bennett in Flint to defendant Valerie Larose, Shirley's daughter, for $16,658.68. On March 25, 1994, Shirley and Booth conveyed the property by warranty deed to defendant George Lambert, a real estate investor, in exchange for $6,000 and Lambert's assumption of a $2,000 mortgage on the property in Shirley's name. On the same day, Shirley and Booth assigned their interest in the land contract with Valerie to Lambert for an undisclosed consideration. On February 24, 1995, a default judgment was entered against Shirley for $22,928.67, after she failed to appear for trial.

On June 9, 1995, plaintiff filed a "Motion for Proceedings Supplementary to Judgment," seeking to join defendants Valerie Larose and George Lambert, and to set aside the March 25, 1994, conveyances as fraudulent, pursuant to the Uniform Fraudulent Conveyance Act (UFCA), MCL 566.11 *et seq.*; MSA 26.871 *et seq*. The trial court entered an order joining defendants Valerie Larose and Lambert, as well as an order to show cause why the conveyances should not be set aside as fraudulent. Following discovery, plaintiff moved for summary disposition pursuant to MCR 2.116(C)(10), and Lambert responded, requesting summary disposition in his favor. Valerie Larose concurred in Lambert's response. At the hearing, the trial court heard arguments of counsel and of Shirley Larose, acting in propria persona, then denied plaintiff's motion and granted summary disposition in favor of Lambert and Valerie Larose, ruling that there was no "intentional fraud."

On appeal, plaintiff argues that the trial court erred in granting summary disposition in favor of defendants Lambert and Valerie Larose. We agree. Pursuant to the UFCA, a creditor's rights and remedies against a fraudulent grantor depend on whether the claims of the creditor have matured. MCL 566.19; MSA 26.889, MCL 566.20; MSA 26.890. Here, plaintiff's claim matured as of February 24, 1995, when the default judgment was entered against Shirley Larose. Plaintiff elected its remedy, pursuant to § 9(1)(a) of the UFCA, which provides:

> (1) Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately or mediately from such purchaser;
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> (a) Have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim. . . . [MCL 566.19(1); MSA 26.889(1).]

The allegations of fraudulent intent on the part of Shirley Larose to hinder, delay, or defraud plaintiff-creditor, and the allegations that defendants Valerie Larose and Lambert participated in or had knowledge of Shirley Larose's fraudulent intent, were sufficient to withstand defendants' motion for summary disposition, but were insufficient to warrant granting plaintiff's motion for summary disposition. In general, the question whether a conveyance was fraudulent is a question of fact and not one of law. MCL 566.224; MSA 26.974. Where, as here, an instrument is valid on its face, but requires extrinsic proof to establish its invalidity, fraudulent intent is a question properly submitted to the trier of fact. *Anderson v Chapman,* 215 Mich 80; 183 NW 908 (1921). A grantor's fraudulent intent may be established by a showing of actual fraudulent intent, MCL 566.17; MSA 26.887, or by a showing of presumed-in-law fraud, MCL 566.14; MSA 26.884. Plaintiff has alleged several often recognized "badges of fraud" in the challenged conveyances, *Brydges v Emmendorfer*, 311 Mich 274; 18 NW2d 822 (1945); *Coleman-Nichols v Tixon Corp*, 203 Mich App 645, 659; 513 NW2d 441 (1994), including inadequate consideration for the conveyances, Shirley's insolvency, the close and/or familial relationship between Shirley and her grantees, and the fact that the conveyances were executed while plaintiff's lawsuit was pending against Shirley. See *id.* at 660. A conveyance from a parent to child, while not raising a presumption of fraudulent intent, is to be closely scrutinized when the

rights of creditors are involved. *Dean v Torrence,* 299 Mich 24; 299 NW 793 (1941); *Fraser v Passage,* 63 Mich 551; 30 NW 334 (1886). Moreover, a conveyance made during the pendency of an action in which judgment was entered against the debtor are generally considered to have been made with the intent to hinder, delay, and defraud creditors. See *Farrell v Paulus,* 309 Mich 441; 15 NW2d 700 (1944). On these facts, we conclude that the question whether the challenged conveyances were fraudulent must be submitted to a trier of fact.

Two remaining issues, which have been raised by defendants in the trial court, deserve our attention. First, defendants assert that the property at 1818 Bennett was exempt from creditors because it was Shirley's homestead, citing MCL 600.6023(8); MSA 27A.6023(8). The record belies this claim. Shirley's handwritten answer to plaintiff's complaint, which was filed with the lower court on February 15, 1994, indicated that Shirley was residing in Florida; therefore, the subject property was no longer Shirley's homestead at the time of the challenged conveyances in March 1994. Second, plaintiff attempted to rely on a transcript of a hearing before a bankruptcy trustee in which Shirley Larose made certain statements regarding her intent in conveying the subject property. The trial court refused to consider the transcript. While this may have been proper for purposes of ruling on a motion for summary disposition, Shirley's prior statements, made while under oath, are admissible at trial on remand to the extent allowed under MRE 613(b) and MRE 801(d)(2).

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry W. Saad
/s/ Donald E. Holbrook, Jr.
/s/ Martin M. Doctoroff