

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

EOD
07/05/2006

IN RE:	§	
	§	
JJBD, INC.	§	Case No. 01-62653
	§	
	§	
Debtor	§	Chapter 11

JJBD, INC.	§	
	§	
Plaintiff	§	
	§	
v.	§	
	§	
LEONARD TENINBAUM, JR. Trustee,	§	
LEONARD TENINBAUM, JR.,	§	Adversary No. 02-1038
Individually	§	
CORBELL COMPANIES, L.L.C.,	§	
JAY MAAI, L.L.C., PRAKASH PATEL,	§	
B.S. DESAI and DINESH DESAI	§	
	§	
Defendants	§	

FINDINGS OF FACT AND CONCLUSIONS OF LAW¹

Upon trial of the complaint in the above-referenced adversary proceeding, the Court issues the following findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52, as incorporated into adversary proceedings in bankruptcy cases by Fed. R. Bankr. P. 7052.²

¹ These findings of fact and conclusions of law are not designated for publication and shall not be considered as precedent, except under the respective doctrines of claim preclusion, issue preclusion, the law of the case or as to other applicable evidentiary doctrines.

² Items identified herein as findings of fact may also be construed to be conclusions of law and are adopted as such. Items identified herein as conclusions of law may also be construed to be findings of fact and are adopted as such. The Court reserves the right to make additional findings and conclusions as necessary or as may be requested by any party.

FINDINGS OF FACT

1. All parties consented to the entry of a final judgment by the Court.

2. The relationships between the parties and the other persons or entities that may be relevant to this case are summarized in the following table:

NAME	DESCRIPTION
Dinesh “Danny” Desai ("Danny")	The Vice-President and Secretary of Plaintiff, and the son of B.S. Desai.
B.S. Desai ("Desai")	The president of Plaintiff and one of two shareholders of the Plaintiff.
Prakash "Perry" Patel ("Patel")	The sole member of Jay Maai, LLC, a Texas limited liability company, and the son-in-law of Desai.
Mike Corbell	The sole member and manager of Corbell Companies, L.L.C.
Corbell Companies, L.L.C. ("Corbell")	A Louisiana limited liability company.
Leonard Teninbaum, Jr. ("Teninbaum")	Individually and as trustee of the Teninbaum & Natale, Inc., Keogh Plan and Trust.
Paul D. Pruitt ("Pruitt")	Former counsel for Danny Desai, B.S. Desai, and Perry Patel
JJBD, Inc. ("JJBD")	A Texas corporation. The Reorganized Debtor and Plaintiff in this adversary proceeding.

3. JJBD, Inc. is a Texas corporation, chartered on October 20, 1989. It is 100% owned by two shareholders, B.S. Desai and his wife, Kanchanben Desai.

4. JJBD purchased the Stratford House Inn, in Tyler, Texas on November 3, 1989. The Inn is located on 0.825 acres of land in the Hezekiah George Survey, A-367, in the city of Tyler, Smith County, Texas (the “Stratford House Inn”).

5. On August 28, 1999 the then-existing debt of JJBD was refinanced by the execution and delivery to First Commercial Bank, N.A. of a promissory note in the original principal amount of \$505,000.00 (the “First Lien Note”). The First Lien Note

was secured by a Deed of Trust of the same date from JJBD to Robert E. Orr, Trustee, which Deed of Trust is recorded in Volume 4483, Page 234 of the Official Public Records of Smith County, Texas (the “First Lien”).³

6. The First Lien Note was secured by the Stratford House Inn and its furniture and fixtures.

7. The unpaid balance of the First Lien Note on the date this Chapter 11 case commenced was \$457,353.71.

8. JJBD operates the Stratford House Inn as a hotel.

9. Jay Maai, L.L.C. is a Texas limited liability company owned by Prakash “Perry” Patel.

10. Jay Maai, L.L.C. contracted with Corbell to complete the construction of improvements on a hotel project in Haltom City, Texas (the “Haltom City Property”).

11. To assist in the financing of the Haltom City Property, Perry Patel, B.S. Desai and Danny Desai executed a promissory note in the original principal amount of \$200,000.00 on December 29, 2000, payable to the order of Corbell.⁴

12. JJBD owns no interest in the Haltom City Property or in Jay Maai, L.L.C.

13. Nevertheless, B.S. Desai, as the president of JJBD, through the execution of a Second Lien Deed of Trust, granted a lien on the Stratford House Inn to secure payment of the December 29, 2000 note which he had executed in his individual capacity, along with Perry Patel and Danny Desai. The Second Lien Deed of Trust is dated December 29, 2000 and was recorded in Volume 5618, Page 135 of the Official Public Records of Smith County, Texas.⁵

14. On May 11, 2001, B.S. Desai, Danny Desai, and Perry Patel executed two promissory notes in the original principal amounts of \$250,000.00 and \$15,000.00,

³ Ex. P-5.

⁴ Ex. P-6.

⁵ Ex. P-8.

respectively, payable to the order of Corbell Companies, L.L.C. The two notes included any amount allegedly owed under the terms of the December 29, 2000, note for \$200,000.00.

15. The \$250,000.00 promissory note is hereafter referred to as the “Disputed Note.”⁶

16. JJBD is not a maker of the Disputed Note. JJBD has made no payments on the Disputed Note, nor is it obligated to do so.

17. On or about May 11, 2001, B.S. Desai, as president of JJBD, executed and delivered a renewal second lien deed of trust covering the Stratford House Inn which purports to secure the payment of the Disputed Note and supposedly renews and extends the lien created in the December 29, 2000 deed of trust. This most recent deed of trust, and any lien it purports to renew or extend, is herein referred to as the “Disputed Lien.”⁷

18. Teninbaum claims to be the owner of the Disputed Lien and the Disputed Note. Ownership is also claimed by First Louisiana Bank.

19. Teninbaum does not claim a lien or security interest against any of the personal property of JJBD.

20. The May 11, 2001 deed of trust evidencing the Disputed Lien was not recorded with the Smith County Clerk until September 12, 2001. Both dates are less than one year prior to November 5, 2001, the date this Chapter 11 Petition was filed.

21. The transfer by JJBD granting the Disputed Lien was a transfer for the benefit of others, including Jay Maai, L.L.C., Perry Patel, B.S. Desai and/or Danny Desai — all of whom are “insiders” as that term is defined in 11 U.S.C. §101(31) and Tex. Bus. & Com. Code §24.002(7).

22. The Disputed Note was not endorsed by Corbell.

23. The Disputed Note is subject to certain conditions and restrictions regarding payment. It was also subject to the terms and provisions of an accompanying contract for the completion of improvements on the Haltom City Property.

⁶ Ex. P-7.

⁷ Ex. P-9.

24. On March 5, 2003, this Court entered its order confirming JJBD's Second Amended Plan of Reorganization (the "Confirmed Plan").⁸

25. Teninbaum participated in the plan confirmation process and, at one point, proposed an alternative plan and disclosure statement as a plan proponent. Teninbaum also filed an untimely objection to the confirmation of the Confirmed Plan. No appeal of the confirmation order was filed.

26. The allowed claim of all taxing authorities with liens against the Stratford House Inn (constituting Allowed Class 3 Claims under the Confirmed Plan) as of the petition date was \$20,989.70.⁹

27. Under the terms of the Confirmed Plan, JJBD has standing to prosecute the claims asserted in this adversary proceeding.¹⁰ JJBD has been appointed for the purpose of prosecuting such claims, and JJBD is the appropriate representative under 11 U.S.C. §1123(b)(3)(B).¹¹

28. JJBD was insolvent at the time the Disputed Lien was originally granted on December 29, 2000.

29. Even in contemplation of any variances regarding the proper valuation of JJBD's assets, particularly the Stratford House Inn¹² and several notes receivable,¹³ the

⁸ Ex. P-15.

⁹ Ex. P-11.

¹⁰ Ex. P-14.

¹¹ *Id.* at ¶ 6.09.

¹² Danny Desai testified, as representative of JJBD, that the value of the hotel at the time of the transfer was approximately \$450,000. While this amount is considerably less than the amount listed in the two appraisals tendered in conjunction with JJBD's disclosure statement, those appraisals encompassed not only the hotel, but all furniture and fixtures, while the value of the realty is the relevant issue when evaluating the accuracy of the financial statements submitted as JJBD's Exhibits 1-3. Danny Desai's testimony is also consistent with the valuations issued by the Smith County Appraisal District. *See* Ex. P-4.

¹³ There was no evidence presented at trial to suggest that these notes (with the possible exception of the B.S. Desai Note) are collectable. The notes should be excluded from the solvency evaluation.

December 31, 2000 unaudited balance sheet, along with the valuation testimony of Danny Desai, establish by a preponderance of the evidence that JJBD's liabilities exceeded its assets by a distinct margin at the time of the transfer of the Disputed Lien.

30. Even if one were to assume that JJBD was slightly solvent prior to the transfer, the transfer of the Disputed Lien clearly rendered JJBD insolvent on December 29, 2000.

31. JJBD was insolvent from December 29, 2000 throughout the remainder of the pre-petition period.

32. JJBD did not receive any value in exchange for the transfer of the Disputed Lien on the Stratford House Inn, notwithstanding any motivations of its officers, directors, or shareholders to assist the activities of Perry Patel and Jay Maai.

33. The creation of the Disputed Lien was not reasonably expected to benefit JJBD, either directly or indirectly.

34. JJBD has no liability for any portion of the Disputed Note or the costs of constructing the Haltom City Property.

35. Even if the Disputed Lien was not avoidable, and the lien was otherwise valid, the "secured amount" of Defendant's claim for purposes of payment under Section 5.06 of the confirmed Plan would be \$0.00.

36. The fair market value of the Stratford House Inn (the real estate and improvements only) as of the date the petition in bankruptcy was filed was only \$461,450.00.¹⁴

37. The aggregate sum of the unpaid balance of the First Lien Note owed on the date that the petition in bankruptcy was filed (\$457,353.71), and the unpaid balance of the ad valorem taxes assessed against the Stratford House Inn (\$20,989.70) was \$478,343.41.

38. JJBD's original complaint was filed on February 8, 2002. Thereafter, summons was issued upon Corbell, which summons was served by mail service on February 14, 2002. Proof of service of summons is properly filed with this Court.

39. Corbell originally filed an answer through an individual who is not licensed

¹⁴ *Id.*

to practice law. On July 7, 2004, this Court entered its order requiring Corbell to appear through licensed counsel and setting a deadline by which it must do so. Corbell failed to meet the deadline.

40. The Court's July 7, 2004 order provided that Corbell's failure to appear by properly licensed counsel would result in Corbell's answer being stricken. Accordingly, Corbell's answer has been stricken.

CONCLUSIONS OF LAW

1. The parties agree that this Court has subject matter jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(B), (F), (H), (K) and (O), and 11 U.S.C. §§ 544, 548, 550 and 506.

2. This is a core proceeding under 28 U.S.C. §157(b)(2)(B), (F), (H), (K) and (O).

3. All parties consented to the entry of a final judgment by the Court.

4. To establish the existence of a constructive fraudulent transfer under 11 U.S.C. §548(a)(1)(B), JJBD must show: (1) the debtor transferred an interest in property; (2) the transfer of that interest occurred within one year prior to the filing of the bankruptcy petition; (3) the debtor received less than reasonably equivalent value in exchange for such transfer; and (4) either: (i) that the debtor was insolvent on the date of the transfer, or became insolvent as a result of the transfer, or (ii) the debtor was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital. *In re GWI PCS I, Inc.*, 230 F.3d 788, 805 (5th Cir. 2000).

5. A party which seeks to void a transfer under §548 bears the burden of proof on all of the required elements, including the debtor's insolvency and the absence of reasonably equivalent value. See e.g. *In re Empire Interiors*, 248 B.R. 305, 307 (N.D. Ohio 2000); *In re Emerald Hills Country Club, Inc.*, 32 B.R. 408 (S.D. Fla. 1983).

6. The Disputed Lien is a "transfer" of an interest in the Stratford House Inn within the meaning of 11 U.S.C. §101(54).

7. In examining a debtor's solvency relating to avoidable transfers, a court looks to the time of the transfer in question, not the time at which the debtor filed its

bankruptcy petition. See *In re Royal Golf Prods. Corp.*, 908 F.2d 91, 95 (6th Cir. 1990); *In re Parker Steel Co.*, 149 B.R. 834, 844 (Bankr. N.D. Ohio 1992); *In re Perry, Adams and Lewis Sec., Inc.*, 34 B.R. 155, 157 (Bankr. W.D. Mo. 1983).

8. A corporate debtor is insolvent when its “financial condition [is] such that the sum of [its] debts is greater than all of [its] property, at a fair valuation....” 11 U.S.C. § 101(32)(A). Courts often refer to this test as a balance sheet test, and then engage in the “fair valuation” of the debts and property shown on the balance sheet, as required by the statute. See, e.g., *In re Taxman Clothing Co., Inc.*, 905 F.2d 166, 169-70 (7th Cir. 1990); *Orix Credit Alliance v. Harvey*, 40 F.3d 118 (5th Cir. 1994).

9. While courts have recognized the possibility that an indirect benefit will constitute some value received in a multi-party transfer, see *Butler Aviation, Int’l, Inc. v. Whyte (In re Fairchild Aircraft)*, 6 F.3d 1119 (5th Cir. 1993); *Tidwell v. Amsouth Bank, N.A. (In re Cavalier Homes of Georgia, Inc.)*, 102 B.R. 878 (Bankr. M.D. Ga. 1989) and cases cited therein, up-stream transfers generally confer no benefit on the down-stream participant. See *Murray v. Prescott, Ball & Turben, Inc. (In re Chicago, Missouri & Western Ry. Co.)*, 124 B.R. 769, 773 (Bankr. N.D. Ill. 1991) “[w]hen it is the debtor subsidiary which makes a transfer resulting in consideration passing to the parent corporation, the benefit to the debtor is presumed to be nominal....”].

10. In the same way, a corporate transfer for the sole benefit or largesse of its shareholders does not bestow a benefit upon the corporation. Thus, JJBD received no value in exchange for granting the Disputed Lien, even indirectly, despite the fact that it may have benefitted the officers, directors, or shareholders of JJBD in some way.

11. JJBD did not receive reasonably equivalent value in exchange for the Disputed Lien which was granted upon the Stratford House Inn.

12. The transfer of the Disputed Lien on the Stratford House Inn was a constructively fraudulent transfer under 11 U.S.C. §548(a)(1)(B).

13. Because the transfer of the Disputed Lien is avoidable as a fraudulent transfer under 11 U.S.C. §548, the “interest” transferred (i.e., the lien) is recoverable by JJBD under 11 U.S.C. §550.

14. Therefore, the Disputed Lien upon the 0.825 acre of real property, and all improvements located thereon, located in the Hezekiah George Survey, A-367, in Tyler, Smith County, Texas, and commonly referenced as the Stratford House Inn, is hereby extinguished and released in all respects and as to all Defendants, including Leonard

Teninbaum, whether asserted in his individual capacity, or as trustee of the Teninbaum & Natale, Inc. Keogh Plan and Trust, and Corbell Companies, L.L.C.

15. Further, JJBD, Inc. is not liable in any capacity for any indebtedness arising from that certain Real Estate Lien Note executed on December 29, 2000, by Prakash Patel, B.S. Desai, and Dinesh Desai in favor of Corbell Companies, L.L.C., in the original principal amount of \$200,000.00, or for any indebtedness arising from that certain Renewal Real Estate Lien Note executed on May 11, 2001, by Prakash Patel, B.S. Desai, and Dinesh Desai in favor of Corbell Companies, L.L.C., in the original principal amount of \$250,000.00.

16. Because the Disputed Lien is fully and completely avoided, extinguished, and released, and because JJBD, Inc. is not liable on any of the underlying notes, including the Disputed Note, all claims by Leonard Teninbaum against JJBD, Inc., whether asserted in his individual capacity, or as trustee of the Teninbaum & Natale, Inc. Keogh Plan and Trust, are disallowed in their entirety.¹⁵

17. Because the Disputed Lien is fully and completely avoided, extinguished, and, released, and because JJBD, Inc. is not liable on any of the underlying notes, including the Disputed Note, as admitted by Corbell Companies, L.L.C. as a result of its default as to the allegations of the Plaintiff's Complaint, all claims by Corbell Companies, L.L.C. against JJBD, Inc. are disallowed in their entirety.

18. Therefore, there is no "Allowed Class 6 Claim" against JJBD, Inc., as that term is defined in JJBD's confirmed Second Amended Plan of Reorganization.

19. Because relief was sought by JJBD against Defendants, Jay Maai, L.L.C., Prakash "Perry" Patel, Dinesh "Danny" Desai, or B.S. Desai, only in the event that the Disputed Lien was found to be valid, unavoidable, and enforceable, thereby forcing JJBD, as the Reorganized Debtor, to compensate Teninbaum under the terms of the Confirmed Plan, and because the Disputed Lien has been avoided, extinguished, and released, no relief shall be granted to JJBD, Inc. against Defendants, Jay Maai, L.L.C., Prakash "Perry" Patel, Dinesh "Danny" Desai, or B.S. Desai.

¹⁵ Though, under the evidence presented, the Court is dubious of the validity of Teninbaum's claim of rights as a holder in due course, or as the beneficiary of some purported ratification or any entitlement to the equitable doctrine of marshaling, the Court need not reach such issues, particularly to Teninbaum's detriment, because, notwithstanding any evidence which might support such claims, such claims are powerless to preclude the avoidance of the Disputed Lien as a fraudulent transfer.

20. An appropriate judgment shall be entered consistent with these findings and conclusions.

Signed on 07/05/2006

A handwritten signature in cursive script, appearing to read "Bill Parker".

THE HONORABLE BILL PARKER
CHIEF UNITED STATES BANKRUPTCY JUDGE