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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
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13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 v.

17 CHARLES P. COPELAND, COPELAND
18 WEALTH MANAGEMENT, A FINANCIAL
19 ADVISORY CORPORATION, AND
20 COPELAND WEALTH MANAGEMENT, A
REAL ESTATE CORPORATION,

21 Defendants.

) CASE NO. CV 11-8607-R
)

) ORDER DENYING TRI TOOL INC'S
) CLAIM
)

22 With the exception of one issue, the Court's order entered November 5, 2013 resolved the
23 Receiver's motion to distribute the assets of, and then cancel, Copeland Properties 18 ("CP18").
24 The issue left unresolved is the validity of Tri-Tool Inc.'s ("Tri Tool") claim against CP18 based
25 on an allegedly fraudulent transfer. The Court previously ruled that this claim was not barred by
26 the statute of limitations and ordered further briefing on the merits of the claim. Doc. No. 385. The
27 parties have now fully briefed the issue.

28 The transfer at issue is Copeland Properties 3's ("CP3") payment of \$333,544.11 to CP18.

1 CP18 used the \$333,544.11 to pay off a debt it owed to the seller of real property CP18 purchased
2 in Wendover, North Carolina. The debt owed to the seller was evidenced by a promissory note
3 (“Wendover Note”).

4 **A. Tri Tool does not have a Right to a Jury Trial**

5 Tri Tool contends that it has a right to a jury trial. Tri Tool is incorrect as “[n]o right to
6 jury trial attaches to equitable proceedings in the administration of a receivership.” *United States*
7 *v. Arizona Fuels Corp.*, 739 F.2d 455, 460 (9th Cir. 1984). Due to the fact that the case involved a
8 summary proceeding, the court in *Arizona Fuels* left open the question of whether a party in a
9 plenary action with a receiver would be entitled to a jury trial. *Id.* The court did, however, make it
10 clear that there was no right to a jury trial in a summary proceeding in an equitable receivership.
11 *Id.* at 460 (“Tenneco’s conclusion that it would have been entitled to a jury trial in a plenary
12 action, even if correct, does not support its claim that otherwise proper summary proceedings
13 violated any existing right. We have already held that summary proceedings were proper, so the
14 jury trial argument fails.”)

15 The instant dispute, like the one in *Arizona Fuels*, is the proper subject of a summary
16 proceeding. *Id.* at 458 (“Receivership courts have the general power to use summary procedure in
17 allowing, disallowing, and subordinating the claims of creditors.”) A plenary proceeding is not
18 necessary here because the Receiver is not engaged with Tri Tool in an ownership dispute over
19 specific property or funds. *Id.* Rather, Tri Tool simply has a claim against the Receivership Estate.
20 Because this dispute is properly proceeding as a summary proceeding within the administration of
21 an equitable receivership, Tri Tool does not have a right to a jury trial. *Id.*

22 **B. The Transfer was not Fraudulent**

23 Tri Tool argues that CP3’s transfer of \$333,544.11 to CP18 constituted an actual intent
24 fraudulent transfer under California Civil Code Section 3439.04(a)(1) and a constructive intent
25 fraudulent transfer under California Civil Code Section 3439.04(a)(2). If Tri Tool is correct it
26 could have a claim against CP18 on the basis of CP18’s status as a transferee of CP3. *Mejia v.*
27 *Reed*, 31 Cal.4th 657, 663 (2003).

1 *1. Actual Intent Fraud Pursuant to Cal. Civ. Code § 3439.04(a)(1)*

2 California Civil Code Section 3439.04(a)(1) provides that a transfer is fraudulent if it was
3 made “[w]ith actual intent to hinder, delay, or defraud any creditor of the debtor.” Factors that
4 courts may give consideration to in determining whether there is “actual intent” for purposes of
5 § 3439.04(a)(1) include:

- 6 (1) Whether the transfer or obligation was to an insider;
- 7 (2) Whether the debtor retained possession or control of the property transferred after the
transfer;
- 8 (3) Whether the transfer or obligation was disclosed or concealed;
- 9 (4) Whether before the transfer was made or obligation was incurred, the debtor had been
sued or threatened with suit;
- 10 (5) Whether the transfer was of substantially all the debtor's assets;
- 11 (6) Whether the debtor absconded;
- 12 (7) Whether the debtor removed or concealed assets;
- 13 (8) Whether the value of the consideration received by the debtor was reasonably
equivalent to the value of the asset transferred or the amount of the obligation incurred;
- 14 (9) Whether the debtor was insolvent or became insolvent shortly after the transfer was
made or the obligation was incurred;
- 15 (10) Whether the transfer occurred shortly before or shortly after a substantial debt was
incurred, and
- 16 (11) Whether the debtor transferred the essential assets of the business to a lienholder who
transferred the assets to an insider of the debtor.

16 Cal. Civ. Code § 3439.04(b).

17 Here, a consideration of the relevant factors leads to the conclusion that there was no actual
18 intent to delay, hinder, or defraud. For instance, CP3 did not maintain control of the money after it
19 was transferred, the transfer was not concealed, CP3 was not threatened with suit or being sued
20 when the transfer was made, and the transfer did not deprive CP3 of substantially all of its assets.
21 On balance, the evidence does not support a finding that the transfer was made with the actual
22 intent to hinder, delay, or defraud.

23 Tri Tool’s arguments relating to these factors are not persuasive. For example, Tri Tool
24 argues that Copeland maintained control of the funds after they were transferred, and that, as a
25 result, factor number two favors a finding of actual intent. Reply, p. 6. Copeland is not the debtor
26 for purposes of this analysis. Rather, CP3, the transferor, is. Cal. Civ. Code § 3439.04(a) (“A
27 transfer made or obligation incurred by a debtor is fraudulent . . .”). The transfer was made by
28 CP3, not Copeland, and Tri Tool has not advanced any argument or authority to the effect that

1 Copeland should be considered CP3's alter ego for purposes of this claim.

2 Tri Tool's argument regarding whether the transfer was concealed only relates to the
3 Pacific Western Bank loan which the Court has already determined to be time-barred. Tri Tool
4 asserts that the transfer was of substantially all of CP3's assets. Tri Tool acknowledges, however,
5 that, along with the transfer at issue here, CP3 paid an investor named Franklin \$230,000 and also
6 "paid other creditors." Reply, p. 6. Therefore the transfer relating to the Wendover Note did not
7 constitute substantially all of CP3's assets.

8 On balance, the factors in § 3439.04(b) do not support a finding that the transfer was made
9 with the actual intent to delay, hinder, or defraud any creditor.

10 *2. Constructive Fraud Pursuant to Cal. Civ. Code § 3439.04(a)(2)*

11 California Civil Code Section 3439.04(a)(2) provides that a transfer is fraudulent if
12 "[w]ithout receiving reasonably equivalent value in exchange for the transfer or obligation . . . the
13 debtor either: (A) Was engaged or was about to engage in a business or transaction for which the
14 remaining assets of the debtor were unreasonably small in relation to the business or transaction
15 [or] (B) Intended to incur, or believed or reasonably should have believed that he or she would
16 incur, debts beyond his or her ability to pay as they became due."

17 CP3 received reasonably equivalent value from CP18 in exchange for CP3's payment to
18 CP18. Specifically, as the Court has already found, the debt obligation arising from the transfer of
19 the funds at issue here "was transferred by CP3 to Copeland Real Estate, Inc. ("CRI") to offset
20 CP3's obligation to CRI." Doc. No. 385, p. 2, ¶ 2. Thus the value that CP3 received in return for
21 its payment relating to the Wendover Note was a satisfaction of a debt CP3 owed to CRI. And, the
22 value of this satisfaction—\$423,544.11—was reasonably equivalent to the value of CP3's
23 payment to CP18. *Id.* As a result, Tri Tool's claim based on California Civil Code
24 Section 3439.04(a)(2) is without merit.

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1 **C. Conclusion**

2 The evidence does not support a finding that CP3's payment to CP18 of \$333,544.11 used
3 by CP18 to cancel the Wendover Note was a fraudulent transfer. Tri Tool's claim against CP3 is
4 therefore denied.

5 **IT IS HEREBY ORDERED** that Tri-Tool's claim based on the Wendover Note is denied.

6 Dated: January 9, 2014.

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A handwritten signature in blue ink, appearing to read 'Real', is written over a horizontal line.

MANUEL L. REAL
UNITED STATES DISTRICT JUDGE