

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

REVSTONE INDUSTRIES, LLC, *et al.*,
Debtors

Chapter 11

Case No. 12-13262 (BLS)
(Jointly Administered)

FRED C. CARUSO, solely in his capacity
as the Revstone/Spara Litigation Trustee
for the Revstone/Spara Litigation Trust,

Plaintiff,

v.

TURNBERRY INVESTORS, LLC

Defendant.

Adv. Proc. No. 14-50656 (BLS)

Re: Docket No. 41

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MEMORANDUM ORDER¹

Upon consideration of the Trustee's Motion for Summary Judgment (the "Motion")² and the accompanying memorandum of law filed by the Trustee³; the opposition to the Motion filed by Defendant Turnberry Investors, LLC ("Turnberry")⁴; the Court hereby FINDS and CONCLUDES as follows:

1. Prior to filing its Chapter 11 petition, the Debtor Revstone Industries, LLC ("Revstone" or the "Debtor") operated a number of manufacturing facilities in the Midwest serving the automotive industry. During all relevant times, George S. Hofmeister ("Hofmeister") served as Revstone's Chairman and sole member of its Board of Managers.

2. Revstone filed for Chapter 11 relief on December 3, 2012 (the "Petition Date") and eventually reached a confirmed Plan.⁵ The Plan established a Litigation Trust and authorized a Litigation Trustee (the "Trustee") to pursue claims on behalf of Revstone's estate.

3. On September 24, 2010, prior to the Petition Date, Revstone transferred \$100,000 from its own accounts to Turnberry. The Trustee herein seeks to recover \$70,000 of that payment (the "Transfer").

4. On August 21, 2014, Revstone commenced this adversary proceeding asserting its right to recover the Transfer under a theory of fraudulent conveyance.

¹ This Memorandum Order constitutes the Court's findings of fact and conclusions of law as required by Federal Rule of Bankruptcy Procedure 7052.

² AP Docket No. 41.

³ AP Docket No. 42.

⁴ AP Docket No. 56.

⁵ Docket No. 2067.

Pursuant to the terms in the confirmed Plan, this adversary proceeding was transferred and assigned to the Litigation Trust and the Trustee became the Plaintiff in this matter. [AP Docket No. 16].

STANDARD

5. Pursuant to 11 U.S.C. §§ 544(b)(1) and 550, and 6 Del. C. § 1305, the Trustee must prove the following in order to avoid the Transfer:

- a. The transfer was a transfer of the relevant Debtor's interest in property;
- b. The relevant Debtor made the transfer without receiving reasonably equivalent value;
- c. The relevant Debtor was insolvent at the time of the transfer, or became insolvent as a result of the transfer; and
- d. At least one creditor of the relevant Debtor held an unsecured, allowable claim against the Debtor that arose before the transfer was made.

6. Under Rule 56 of the Federal Rules of Civil Procedure, a court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56; *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986) (“Under Rule 56(c), summary judgment is proper ‘if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’”).

THE PARTIES' POSITIONS

7. The Trustee argues that he is entitled to summary judgment against Turnberry on his claim for relief pursuant to 11 U.S.C. §§ 544, 550, and 6 Del. C. § 1305. In support, the Trustee has shown Revstone transferred \$100,000 to Turnberry on September 24, 2010. [Trustee's exhibit G, A202-203]. In addition, the Trustee has presented an expert report that attests Revstone was insolvent at the time of the transfer, had two predicate creditors, and did not receive anything of value in return. [AP Docket No. 45 (the "Lukenda Report")].

8. The Trustee therefore contends that he has proven the elements of a constructively fraudulent conveyance: the Debtor was insolvent at the time of the transfer, it had at least one predicate creditor, and a transfer of the Debtor's property was made that lacked reciprocal value.

9. Turnberry argues that there are remaining issues of material fact. Specifically, Turnberry argues the Trustee has not met his burden in showing (1) Revstone was insolvent at the time of the Transfer, (2) that Revstone did not receive reasonably equivalent value for the Transfer, and (3) that Revstone had at least one predicate creditor.

JURISDICTION

10. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b) and (e). This adversary proceeding is a core proceeding within

the meaning of 28 U.S.C. § 157(b)(2)(H).⁶ Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

ANALYSIS

11. In order to recover under a theory of fraudulent conveyance, the Trustee has the burden of establishing each element of § 544 and 6 Del. C. § 1305 by a preponderance of the evidence. *In re MDIP Inc.*, 332 B.R. 129, 132 (Bankr. D. Del. 2005).

12. As noted, the parties do not dispute that the Transfer was Debtor's property and it was transferred to Turnberry. The Trustee has met his burden under that prong. The remaining elements are addressed in turn.

SOLVENCY

13. The Trustee alleges that Revstone was insolvent at the time of the Transfer and in support has presented an expert report from James Lukenda. In response, Turnberry has filed declarations from Hofmeister and Scott McClarty, each offering lay opinions attesting that Restone held valuable assets at the time of the Transfer that may have rendered the enterprise solvent. [AP Docket No. 56, exhibits 1 and 2].

14. The Court finds that the Trustee has affirmatively established insolvency by presenting the Court with the expert report of James Lukenda and has met his burden under this prong. The Lukenda Report asserts that Revstone

⁶ In its Answer, Turnberry denies that this Court has jurisdiction. [AP Docket No. 3]. The matter before this Court is an action to recover a fraudulent transfer under 11 U.S.C. 544, which is plainly within this Court's authority to adjudicate matters arising under title 11.

was insolvent when value was transferred to Turnberry. Mr. Lukenda's report reflects that he is qualified to perform the analysis and render an opinion as to solvency.⁷ The record further reflects that Mr. Lukenda applied generally accepted methodologies in reaching his conclusion that Revstone was insolvent at the time of the Transfer. [Lukenda Report at A023-A032].

15. Turnberry relies on the lay opinion testimony of Hofmeister and Homer W. McClarty.⁸ The Court acknowledges that Federal Rule of Evidence 701 and case law permit opinion testimony by lay witnesses. Fed.R.Evid.701; *See Glosband v. Watts Detective Agency, Inc.*, 21 B.R. 963 (D.Mass. 1981); *In re Biddiscombe Int'l, LLC*, 392 B.R. 909, 919 (Bankr.M.D.Fla. 2008) (“[M]ost courts allow an owner or officer of a business to testify as to its value or projected profits without the need to qualify the owner as an expert because such lay opinion testimony is based on a type of personal knowledge—the ‘particularized knowledge that the witness has by virtue of his or her position in the business.’”) (citing Fed.R.Evid. 701 Advisory Committee Notes).

16. Although lay witness opinions may be admissible, the Court will nevertheless assess and assign the weight they should be given in light of their character and persuasiveness. *Glosband*, 21 B.R. at 981 (D.Mass. 1981).

Considering the complexity of a solvency analysis, particularly in this large Chapter

⁷ Turnberry also contends that Mr. Lukenda's expert conclusion is tainted because he is conflicted and his employer holds a claim in these bankruptcy cases. The Court finds that the Defendant's observations and concerns as to Mr. Lukenda's role and motivations do not rise to a level that would indicate his conclusions are unreliable.

⁸ McClarty is the Trustee of the Irrevocable Trust of Scott R. Hofmeister. McClarty Declaration ¶ 1 [Turnberry's Ex. 2].

11 case, the Court assigns little weight to the lay opinions of Hofmeister and McClarty. The declarations from Hofmeister and McClarty each offer values to some of Revstone’s assets, but neither explains how the declarant reached the number. They provide a dollar value without any explanation or supporting evidence. It would appear Hofmeister and McClarty’s opinions on value are just that—opinions, uninformed by any generally accepted valuation methodology.

17. By contrast, the Lukenda Report contains a detailed analysis of Revstone’s assets and an explanation of Mr. Lukenda’s methodology. Mr. Lukenda relied on the fair market transaction values paid by Hofmeister for the assets and the values assigned to those assets by independent auditors. [Lukenda Report at A024]. Mr. Lukenda notes that substantially all of the assets were acquired between January 1, 2009 and December 3, 2012, so the historic values paid by Hofmeister and assessed by the auditors reflect recent transactions that are reasonably reliable.

18. Turnberry argues other circumstantial evidence suggests Revstone was solvent at the time of the Transfers. In particular, it underlines statements from an Unqualified Audit Opinion for 2010 prepared by a public accounting firm.⁹ The Audit Opinion, Turnberry argues, lacks a statement that there was substantial doubt about Revstone’s ability to continue as a going concern and therefore “a

⁹ Turnberry also presents (1) an industry report from 2010 suggesting a favorable outlook for auto parts manufacturers and (2) a statement in Revstone’s Disclose Statement that Revstone was a “premier designer and manufacturer of highly engineered components for automotive and other industrial sectors.” The Court is unpersuaded by these evidentiary submissions. They may have suggested a brighter future for Revstone in 2010, but they do not demonstrate Revstone’s solvency.

reasonable jury could conclude that Revstone was solvent” through 2012. [AP Docket No. 56]. The Court is not persuaded by this argument. The fact that an Audit Opinion lacks a going concern statement is not sufficient to rebut the detailed and specific findings in the Lukenda Report. Additionally, even if Revstone had a going concern value at the time of the Transfer, it does not necessarily follow that Revstone was solvent.¹⁰

19. Given Mr. Lukenda’s experience and his thorough analysis of Revstone’s financial history, the Court is persuaded by his conclusion that Revstone was insolvent at the time of the Transfer. The lay opinions and various reports filed by Turnberry fall short of creating a genuine dispute as to insolvency. The Trustee has met his burden of proving insolvency and is entitled to summary judgment on that issue.

PREDICATE CREDITOR

20. Turnberry argues that Revstone did not have the necessary predicate creditor at the time the transfer was made. The Trustee presented two creditors it alleges held claims against Revstone at the time of the Transfer: Kentucky IU Division (“Kentucky”) and the Indiana Collections Unit (“Indiana”). Turnberry argues the Kentucky claim is ineligible to serve as a predicate creditor because

¹⁰ *Compare* Going Concern Value, Black's Law Dictionary (10th ed. 2014) (“The value of a commercial enterprise's assets or of the enterprise itself as an active business with future earning power, as opposed to the liquidation value of the business or of its assets.”) *with* Insolvent, Black's Law Dictionary (10th ed. 2014) (“[H]aving liabilities that exceed the value of assets; having stopped paying debts in the ordinary course of business or being unable to pay them as they fall due.”).

Kentucky filed its proof of claim after the bar date and the Indiana claim is ineligible because it is inaccurate and filed in error.

21. Even excluding the Indiana claim, the Trustee has met its burden in showing Revstone had at least one predicate creditor at the time of the Revstone Transfer. The Kentucky and Indiana claims were not objected to and were deemed allowed in the bankruptcy proceeding. *See* 11 U.S.C. § 502(a) (“A claim or interest ... is deemed allowed, unless a party in interest ... objects.”). The Court agrees with the Trustee that the filing of the claim made the claimant an eligible predicate creditor. The Trustee has met its burden of proof and is entitled to summary judgment on this issue.

REASONABLY EQUIVALENT VALUE

22. Finally, Turnberry argues that Revstone received reasonably equivalent value for the Transfer. It alleges Revstone made the Transfer in exchange for a 7.5% membership interest in International Procurement Contracting Group LLC (“IPCG”), an entity that is under the same umbrella of companies as Turnberry.

23. In support, Turnberry has produced a Declaration from Shakir W. Alkhafaji, Turnberry’s manager. [AP Docket No. 56-2 (“Alkhafaji Declaration”)]. Mr. Alkhafaji alleges \$60,500 of the Transfer went toward satisfying Revstone’s capital contribution in acquiring the interest in IPCG. The remaining \$9,500 went toward paying other obligations and office expenses incurred by Revstone, which shared office space with several Turnberry-related entities.

24. Turnberry has also filed transaction journal entries that appear to support its assertion that Revstone received value in exchange for the Transfer. [Alkhafaji Declaration, exhibits C and D]. According to those documents, the Transfer ultimately went to Veritas Limited LLC, the umbrella company that encompasses IPCG and Turnberry. In addition, Turnberry's assertions are supported by a 2012 Schedule K-1 that asserts Revstone was a partner with IPCG and entitled to 7.5% of its profits. [Alkhafaji Declaration, ex. J].

25. Based on the Alkhafaji Declaration and the various financial records that suggest Revstone acquired a 7.5% interest in a Turnberry-related entity, Turnberry has established a reasonable dispute of material fact over whether Revstone received reasonably equivalent value. Turnberry has credibly established the possibility that the Revstone made the Transfer to acquire an interest in IPCG and to satisfy obligations to Turnberry-related entities.

26. For all these reasons, the Court finds the Trustee is entitled to partial summary judgment on its claim for fraudulent conveyance. The elements of fraudulent conveyance have been proven, except for the issue of whether Revstone received reasonably equivalent value for the Transfer.

Accordingly, it is hereby:

ORDERED, that the Trustee's Motion for Summary Judgment against Turnberry is GRANTED in part, and DENIED in part; and it is further

ORDERED, that the Trustee is directed to submit a form of judgment order consistent with the Court's ruling within 14 days of the date hereof.

Dated: January 10, 2019
Wilmington, Delaware


Brendan Linehan Shannon
United State Bankruptcy Judge