

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

In re:

W.J. Bradley Mortgage Capital, LLC, *et al.*,

Debtors.

Chapter 7

Case No. 16-11049 (BLS)

GEORGE L. MILLER, Chapter 7 Trustee for
the jointly administered Chapter 7 bankruptcy
estates of W.J. Bradley Company Merchant
Partners 2003- SEED, LLC, W.J. Bradley
Mortgage Capital, LLC, W.J. Bradley
Corporate Services, LLC, W.J. Bradley
Financial Services, LLC, and WJB Mortgage
Services, LLC,

Adv. Pro. No. 18-50385 (BLS)

(Re: D.I. 101, 102, 105 and 107)

Plaintiffs,

v.

WILLIAM J. BRADLEY, JOSEPH A.
CAMBI, ARTHUR S. DEMOULAS,
GERARD LEVINS, AUDREY KIRDAR,
DANIEL BARUCH, HOWARD
MICHALSKI, ASD MERCHANT
PARTNERS LLC, SPRINGFIELD CAPITAL
LLC, ARTHUR S. DEMOULAS
CONTINUATION TRUST, ARTHUR S.
DEMOULAS 2012 TRUST, AND PETER
PICKNELLY,

Defendants.

MEMORANDUM ORDER
DENYING MOTION FOR JUDGMENT ON THE PLEADINGS¹

Before the Court is the Demoulas Defendants’ Motion for Judgment on the Pleadings on Counts II and V of the Complaint Pursuant to Fed. R. Civ. P. 12 (c) (the “Motion”).² The Plaintiff, George L. Miller, Chapter 7 Trustee (the “Trustee”), filed a response in opposition to the Motion.³ The Demoulas Defendants filed a reply brief.⁴ A Notice of Completion of Briefing was filed and the matter is ripe for decision.

The Motion seeks judgment on the pleadings with respect to two claims to avoid actual fraudulent transfers based upon 11 U.S.C. §548(a)(1)(A) (Count II) and 11 U.S.C. §544 and 6 Del C. 1304(a)(1) (Count V).⁵ For the reasons set forth herein, the Motion will be denied.

PROCEDURAL BACKGROUND

The Debtors, W.J. Bradley Mortgage Capital LLC and affiliated entities (“WJB” or the “Debtors”), filed voluntary petitions for relief under Chapter 7 of the Bankruptcy Code on April 28, 2016 (the “Petition Date”). The Trustee commenced this adversary proceeding by filing a complaint (the “Complaint”) against the Defendants, including the former officers and directors of Debtors and their affiliated companies, asserting claims for breach of fiduciary duty, avoidance of transfers, unjust enrichment, and corporate waste.

¹ This Court has jurisdiction to decide this Motion pursuant to 28 U.S.C. § 157 and §1334(b). This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(H). Pursuant to Fed. R. Civ. P. 52 (made applicable here through Fed. R. Bankr. P. 7052) the Court does not make findings of fact for purposes of a decision on a Fed. R. Civ. P. 12 motion.

² Adv. D.I. 101, 102. The “Demoulas Defendants” consist of Arthur S. Demoulas, ASD Merchant Partners LLC, Arthur S. Demoulas Continuation Trust and Arthur S. Demoulas 2012 Trust.

³ Adv. D.I. 105.

⁴ Adv. D.I. 107. The Court approved sealing the Reply Brief pursuant to Order dated May 14, 2020 (Adv. D.I. 111).

⁵ Count V of the Complaint seeks avoidance of transfers pursuant to 6 Del. C. §§ 1304 and 1305, which includes both actual and constructive fraudulent transfers. The Demoulas Defendants’ Motion seeks a ruling on Count V only to the extent that it seeks to avoid transfers under § 1304(a)(1) (i.e., transfers made “[w]ith actual intent to hinder, delay or defraud any creditor of the debtor.”

Certain Defendants filed separate motions to dismiss the Complaint pursuant to Rule 12(b)(6), which the Court granted, in part, and denied, in part. (D.I. 63). Following this ruling, the Defendants engaged in mediation with the Honorable Myron T. Steele, former Chief Justice of the Delaware Supreme Court. The Trustee reached a settlement with a number of the Defendants, not including the Demoulas Defendants, on the claims that the Court did not dismiss.⁶

The Trustee's remaining claims against the Demoulas Defendants seek to avoid and recover a \$25 million Redemption Transfer made by the Debtors in December 2015 for the equity interest of ASD Merchant Partners LLC ("ASD"), controlled by Defendant Arthur S. Demoulas ("Demoulas"). The Demoulas Defendants move for judgment on the pleadings with respect to the Second and Fifth Claims which seek to avoid fraudulent transfers based on the transferor's actual intent to hinder, delay, or defraud creditors.

LEGAL STANDARD

Motions for judgment on the pleadings are governed by Federal Rule of Civil Procedure 12(c), which provides that, "[a]fter the pleadings are closed - - but early enough not to delay trial - - a party may move for judgment on the pleadings." Fed R. Civ P. 12(c). When a defendant seeks judgment on the pleadings under Rule 12(c), the motion is analyzed under the same standard as a motion to dismiss a complaint under Rule 12(b)(6). *Off'l Comm. of Unsecured Creditors of Fedders North America, Inc. v. Goldman Sachs Credit Partners, LP (In re Fedders North America, Inc.)*, 422 B.R. 5, 9 (Bankr. D. Del. 2010). "To survive a motion to dismiss, a

⁶ The Defendants who reached a settlement with the Trustee, that the Court approved on January 28, 2020 (Adv. D.I. 87), include: (i) William J. Bradley ("Bradley"), President and Chief Executive Officer ("CEO") of WJB and a member of the WJB Board of Managers (the "Board"); (ii) Joseph Cambi ("Cambi"), Chairman of the Board and President and Manager of Springfield Capital LLC ("Springfield"); (iii) Gerard Levins ("Levins"), member of the Board; (iv) Audrey Kirdar ("Kirdar"), member of the Board; (v) Daniel Baruch ("Baruch"), Chief Operating Officer and Senior Managing Director of WJB; (vi) Howard Michalski ("Michalski"), Executive Managing Director of WJB; and (vii) Springfield, a Massachusetts limited liability company controlled by Cambi. Defendant Peter Picknelly entered into a separate settlement with the Trustee that the Court approved on February 26, 2020 (Adv. D.I. 94).

complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662,678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In ruling on a 12(b)(6) motion, the court must “accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief.” *Phillips v. County of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008).

DISCUSSION

Both Bankruptcy Code section 548(a)(1)(A) and Delaware Code section 1304(a)(1) provide for the avoidance of transfers made with actual intent to hinder, delay, or defraud creditors.⁷ To adequately plead an actual fraudulent transfer claim, “some courts require a pleading to allege facts raising a strong inference that the debtor made a conveyance with the ‘purpose of placing a debtor’s assets out of the reach of creditors,’ either through direct proof of fraudulent intent or the existence of ‘badges of fraud,’ which ‘focus the inquiry on the circumstances that suggest a conveyance was made with fraudulent intent.’” *Kirschner v. Fitzsimons (In re Tribune Fraudulent Conveyance Litig.)*, No. 12-cv-2652 (RJS), 2017 WL 82391, *11 (S.D.N.Y. Jan. 6, 2017) (citations omitted).⁸ A plaintiff could also allege an intentional fraudulent transfer if the “natural consequence” of a debtor's actions is that creditors were hindered, delayed, or defrauded. *See In Re Tribune Co.*, 464 B.R. 126, 162 (Bank. D. Del. 2011) (citing *United States v. Tabor Court Realty Corp.*, 803 F.2d 1288, 1305 (3d Cir. 1986)). *See also Giuliano v. Schnabel (In re DSI Renal Holdings, LLC)*, 574 B.R. 446, 467 (Bankr. D. Del. 2017) (“[I]f one

⁷ “It is undisputed that the Delaware . . . Fraudulent Transfer Act tracks section 548 of the Bankruptcy Code (or vice versa).” *Autobacs Strauss, Inc. v. Autobacs Seven Co., Ltd. (In re Autobacs Strauss, Inc.)*, 473 B.R. 525, 567 (Bankr. D. Del. 2012).

⁸ “The ‘badges of fraud’ that courts often refer to include, but are not limited to: (1) the relationship between the debtor and the transferee; (2) consideration for the conveyance; (3) insolvency or indebtedness of the debtors; (4) how much of the debtor's estate was transferred; (5) reservation of benefits, control or dominion by the debtor over the property transferred; and (6) secrecy or concealment of the transaction.” *Fedders*, 405 B.R. at 545 .

acts with knowledge that creditors will be hindered or delayed by a transfer but then intentionally enters the transaction in disregard of this fact, he acts with actual intent to hinder and delay them.” (quoting *ASARCO LLC v. Americas. Mining Corp.*, 396 B.R. 278, 387 (S.D. Tex. 2008)).

Under § 548(a)(1)(A), “it is the intent of the transferor/[debtor] and not the transferee that is relevant for purposes of pleading a claim for intentional fraudulent conveyance.” *Christian Bros. High School Endowment v. Bayou No Leverage Fund, LLC (In re Bayou Group, LLC)*, 439 B.R. 284, 304 (S.D.N.Y. 2010) (quoting *Silverman v. Actrade Capital, Inc. (In re Actrade Fin. Techs. Ltd.)*, 337 B.R. 791, 808 (Bankr. S.D.N.Y. 2005)).⁹ “Because all corporations must act through agents, courts assessing the intent of a corporation in a fraudulent conveyance claim will look to the intent of the corporate actors who effectuated the transaction on behalf of the corporation.” *Tribune Fraudulent Conveyance Litig.*, 2017 WL 82391, *5 (citations omitted).

The Complaint contains numerous factual allegations that the Debtors, specifically Bradley, Cambi, and the other Board members who approved the Redemption Transaction, knew that the \$25 million Redemption Transfer was “highly inflated and not based on market realities.” (Compl. ¶ 38, ¶51; *See also, generally*, Compl. ¶¶ 37 – 56). The Complaint also contains numerous factual allegations that the Redemption Transfer caused the financial collapse of WJB. (Compl. ¶¶ 61 – 77). These allegations are sufficient to allow the actual fraudulent transfer claims to move forward.


⁹ *See also SB Liquidation Trust v. Preferred Bank (In re Syntax-Brilliant Corp.)*, 573 F. App’x 154, 161-62 (3d Cir. 2014) (Deciding that § 548(a)(1)(A) and 6 Del. Code § 1304 focus solely on the intent of the debtor. “Neither the Bankruptcy Code nor Delaware law refers to the intent of the obligee defendant as a factor in determining whether a specific obligation is fraudulent and therefore avoidable.”).

CONCLUSION

Accordingly, viewing the Complaint's factual allegations in the light most favorable to the Plaintiff, the Court concludes that the Complaint adequately states a claim for avoidance of actual fraudulent transfers.¹⁰ The Demoulas Defendants' Motion for Judgment on the Pleadings is DENIED.

FOR THE COURT:

Dated: September 3, 2020



Brendan Linehan Shannon
United States Bankruptcy Judge

¹⁰ The Court also acknowledges the Trustee's argument that, as a practical matter, dismissing the actual fraudulent transfer claims will not meaningfully streamline this litigation.