

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:)
STONECRAFTERS, LTD.,) CASE NO. 96-30422 (ASD)
)
DEBTOR.) CHAPTER 7

MICHAEL J. DALY,)
CHAPTER 7 TRUSTEE,)
PLAINTIFF,)
vs.) Adv. Pro. No. 98-3104
)
CONSTANCE KRONBERG,)
DEFENDANT.)

MICHAEL J. DALY,)
CHAPTER 7 TRUSTEE,)
PLAINTIFF,)
vs.) Adv. Pro. No. 98-3107
)
MICHAEL KRONBERG,)
DEFENDANT.)

MICHAEL J. DALY,)
CHAPTER 7 TRUSTEE,)
PLAINTIFF,)
vs.) Adv. Pro. No. 98-3108
)
JOHN KRONBERG, JR.,)
DEFENDANT.)

APPEARANCES:

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**CONSOLIDATED MEMORANDUM OF DECISION ON COMPLAINTS
TO AVOID TRANSFERS**

DABROWSKI, ALBERT S., United States Bankruptcy Judge

I. BACKGROUND

Before the Court are the three captioned adversary proceedings commenced by Michael J. Daly (hereafter, the "Trustee-Plaintiff"), the duly appointed Chapter 7 Trustee for Stonecrafters, Ltd. (hereafter, the "Debtor"), to avoid and recover, as preferential or fraudulent, certain transfers from the Debtor to the Defendants within the one-year and four-year periods prior to the bankruptcy petition date. This Consolidated Memorandum of Decision sets forth the factual and legal bases of the Court's judgment in each adversary proceeding.

II. JURISDICTION

The United States District Court for the District of Connecticut has subject matter jurisdiction over the instant adversary proceeding by virtue of 28 U.S.C. § 1334(b); and this Court derives its authority to hear and determine these proceedings on reference from the District Court pursuant to 28 U.S.C. §§ 157(a), (b)(1). These are "core proceedings" pursuant to 28 U.S.C. §§ 157(b)(2)(A), (F), (H) & (O).

III. FACTUAL BACKGROUND

The Court's findings of fact are derived from the evidence adduced at the joint trial of these proceedings, as well as the Court's independent examination of the official record of the instant bankruptcy case and adversary proceedings. At the trial the Court heard the testimony of (i) the Trustee-Plaintiff, (ii) Donna Kowalski, the Debtor's bookkeeper, (iii) Bruce Carusillo, the Debtor's accountant, (iv) Defendant Constance Kronberg (hereafter,

“Constance”), the Debtor’s Secretary/Treasurer and an alleged transferee, and (v) John W. Kronberg, the Debtor’s President. By agreement of the parties the Court also received in evidence in Adversary Proceeding No. 98-3108, an Affidavit, Doc. I. D. No. 51, of Defendant John Kronberg, Jr. – an alleged transferee. In addition, the Court has read the Post-Trial briefs submitted by the Trustee-Plaintiff and Defendants and examined the voluminous documentary evidence offered by both parties and admitted into evidence.

A. The Debtor and the Bankruptcy Estate.

This bankruptcy case was commenced by the filing of a voluntary petition under Chapter 7 of the Bankruptcy Code on February 14, 1996 (hereafter, the “Petition Date”). An order for relief entered in this case and the Trustee-Plaintiff was appointed the Chapter 7 trustee on the Petition Date. On February 13, 1998, consistent with his duties as trustee, the Trustee-Plaintiff commenced these proceedings against the three Defendants alleging they received avoidable transfers of property from the Debtor within applicable time-frames established under the Bankruptcy Code and state law.

At all relevant times prior to May 1, 1995, the Debtor was a Connecticut corporation engaged in “stone cutting”, *i.e.* the fabrication of marble, granite, etc. Defendant Constance, along with her husband, John W. Kronberg (hereafter, collectively, the “Kronbergs”), controlled all aspects of the Debtor’s operations. Defendants Michael Kronberg (hereafter, “Michael”), John Kronberg, Jr. (hereafter, “John Jr.”), the Kronbergs’ sons, occasionally assisted in the family business of the Debtor.

B. The Defendants and the Subject Transfers.

The following is a brief description, with respect to each Defendant, of the circumstances of the transfers which are the subjects of these adversary proceedings.

1. Defendant Constance Kronberg (Adv. Pro. No. 98-3104).

At all relevant times, Constance, as the Debtor's Secretary/Treasurer and sole shareholder, was an "insider" of the Debtor within the meaning of Conn. Gen. Stat. Section 52-552b(7) and Section 101(31) of the Bankruptcy Code. The Trustee-Plaintiff alleges that Constance was the recipient or beneficiary of transfers totaling \$28,986.40, which he asserts are avoidable by him in this case.

At all relevant times it was the practice of the Debtor to maintain a petty cash account from which employees were reimbursed for expenses incurred on behalf of the Debtor on a daily/regular basis. At the trial, Constance acknowledged receiving, during the four years preceding the Petition Date, and endorsing, numerous checks on the Debtor's accounts payable to her or to "Cash" totaling approximately \$27,231.97.¹ Of this amount, payments totaling \$1,654.38² were made during the one year period preceding the Petition Date. Constance testified that the preponderance of these checks were cashed by her acting as the Debtor's primary bookkeeper to fund the Debtor's petty cash account.³

¹In view of the conclusion reached herein, the variance of \$1,754.43 (\$28,986.40 - 27,231.97 = \$1,754.43) between the Complaint and proof at trial, see Exhibit D, is of no consequence.

²The Trustee-Plaintiff seeks to avoid 1995 payments to Constance totaling \$1,254.38. Exhibit D, with reference to 1995, includes, *inter alia*, two checks payable to Constance totaling \$654.38, and two checks payable to Cash endorsed by Constance totaling \$1,000.00, for 1995 payments totaling \$1,654.38. The difference appears to be Check No. 4609, see footnote 5, *infra*.

³Constance testified that certain checks received by her constituted reimbursement for business related cash purchases, see, e.g. footnote 5, or were used

Constance further testified that she only reimbursed employees from the petty cash account for expenses supported by invoices and/or receipts presented to her. Several cubic feet of such invoices and receipts, along with additional financial records, were received in evidence. The above-referenced invoices and receipts document a wide range of expenses – from gasoline to food⁴ – totaling, according to counsel for the Defendants, \$57,585.83.⁵ Defendant [Constance Kronberg’s] Post-Trial Brief at page 6, Doc. I. D. No. 36 (Adv.No. 98-3104).

for other (non-petty cash) expenses/purposes such as employee bonuses.

⁴Referring to Check No. 4690 – \$400.00 reimbursement for items purchased June 25, 1995 at the “Price Club” – the Trustee-Plaintiff observes that the “receipt which corresponds to this check, however, lists items which would not generally be used by the Debtor in its business operations, such as dog food, sauerkraut and sun-dried tomatoes . . . [thereby casting] some doubt on the extent to which the Debtor received reasonably equivalent value in exchange for any of the checks evidencing [payments to Constance for petty cash account reimbursement]”. *Plaintiff’s Post-Trial Brief* at page 3, fn. 2. However, when asked by the Court to explain this purchase at trial Constance testified at trial to a business purpose as follows:

THE WITNESS: It looks like sodas, Scott tissues and I believe it was other miscellaneous things for the July picnic.

THE COURT: Well, let me read up from the bottom turkey breast, head of lettuce, blueberry pie, apple, manicotti, 400 I.D.U. 300 – what’s that? Oh, vitamin E, some vitamin E, meatballs, regular white three-pack cooked shrimp, Cascade dish, salt, bleach, detergent, am I reading it correctly?

THE WITNESS: Yes.

THE COURT: Now, was that for the company?

THE WITNESS: It was for the company picnic, July 4.[Attended by approximately 35 people].

Tr. 11/23/98 at p. 91-92.

⁵See also “Summary of Defendant’s Exhibit Evidence” referenced in the *Defendant’s [Constance Kronberg’s] Post Trial Brief* at page 6, Doc. I. D. No. 36 (Adv. No. 98-3104). The Court examined the actual exhibits admitted into evidence. However, due to the sheer volume of the documentary evidence the Court itself did not *calculate* the precise monetary total of the invoices and receipts.

2. Defendant Michael Kronberg (Adv. Pro. No. 98-3107).

The Defendant Michael is an “insider” of the Debtor within the meaning of Conn. Gen. Stat. Section 52-552b(7) and Section 101(31) of the Bankruptcy Code. The Trustee-Plaintiff alleges that Michael was the recipient or beneficiary of transfers totaling \$2,775.00 which he asserts are avoidable by him in this case.

At the trial, the Trustee-Plaintiff introduced cancelled checks drawn on the Debtor’s accounts during the four years preceding the Petition Date, payable to Michael, totaling \$2,775.00. Exhibit E. Constance testified that the largest check in this group – Exhibit E, Check No. 93, payable to “Michael Kronberg”, in the amount of \$890.00 – was a direct reimbursement to Michael for materials and travel expenses incurred incident to a business trip to Canada (or possibly Vermont) and “was listed as such on the copy of the payroll journal.” Tr. 11/23/98 at 87. The remaining checks payable to Michael consisted of (i) two payroll checks totaling \$375.00, Exhibit E, Check Nos. 2004 & 2936, and (ii) five checks totaling \$1,510.00, Exhibit E, Check Nos. 1813,⁶ 1825, 1857, 96 & 97, cashed by Michael and used to fund/replenish the petty cash account.

3. Defendant John Kronberg, Jr. (Adv. Pro. No. 98-3108).

The Defendant John Jr. is an “insider” of the Debtor within the meaning of Conn. Gen. Stat. Section 52-552b(7) and Section 101(31) of the Bankruptcy Code. The Trustee-Plaintiff alleges that John Jr. was the recipient or beneficiary of transfers totaling \$2,605.60 which he asserts are avoidable by him in this case.

⁶For example, Constance testified that she wrote out Check No. 1813 for \$400.00, payable to Michael, which he converted into cash and returned to her for use in connection with the petty cash account. Tr. 11/23/98 at page 85.

At the trial, the Trustee-Plaintiff introduced cancelled checks drawn on the Debtor's account during the four years preceding the Petition Date, payable to John, totaling \$2,605.00. Exhibit F. According to the Affidavit of John Kronberg, Jr., Doc. I. D. No. 51 (hereafter, the "Affidavit"), and consistent with the testimony of Constance,⁷

[Exhibit F] [C]heck # 1875 . . . in the amount of \$800.00, as shown on page 4 of said Exhibit 6(J)(a) was for painting the premises of [the Debtor], in accord with my statement set forth on page 5 of said Exhibit. I did that work personally with the help of Richard Nosal, Jr., who was a partner in my business known as J & R Painting.

Affidavit at ¶ 3.

[Exhibit F] [C]heck # 4080 . . . in the amount of \$700.60 [represents] payment for a cleaning job at the Vikmanis residence, 65 Abrams Street, Cheshire, Connecticut. Vikmanis was a client of [the Debtor], and I did the cleaning work as a subcontractor for [the Debtor]. In accord with pages 11, 12, 13 and 14v of Exhibit 6(J)(a). This job was done by myself and Anthony Phoenix.

Affidavit at ¶ 4.

The remaining six checks payable to John Jr. consisted of payroll checks totaling \$1,105.60, Exhibit F, Check Nos. 94,⁸ 2005, 2700, 2760, 3395 & 3418, for "occasional work [he] did for [the Debtor]". Affidavit at ¶ 2.

IV. DISCUSSION

A. Governing Law.

1. Fraudulent Transfers.

⁷Counsel for the Trustee-Plaintiff stipulated that the Court could receive the testimony of John Jr. by way of a post-trial affidavit, *provided*, the Affidavit "will be consistent with what [counsel for the Defendants] has already told me and [Constance] already testified to" Tr. 1/26/99 at page 82.

⁸Exhibit F, Check No. 94, in the amount of \$100.00, was not addressed in the Affidavit. Constance, however, testified that all the checks in Exhibit F represented payroll checks related to John Jr. Tr. 11/23/98 at 72.

In the present proceedings the Trustee-Plaintiff seeks, *inter alia*, to avoid and recover certain payments to the Defendants as “fraudulent transfers” pursuant to Bankruptcy Code Sections 548(a), 544(b) and 550. With the policy goal of maximizing the assets that constitute property of the bankruptcy estate, and thereby allowing greater distributions to creditors, the Bankruptcy Code has granted trustees the power to avoid certain prepetition transfers under Sections 544(b) and Section 548(a), *inter alia*. These tools serve to mitigate prejudice to creditors from the undue depletion of the debtor’s property as a result of illicit transfers. See, e.g., Le Café Creme, Ltd. v. Le Roux (In re Café Creme, Ltd.), 244 B.R. 221, 238 (Bankr. S.D.N.Y. 2000).

In the respective Complaints the Trustee-Plaintiff seeks, *inter alia*, to avoid alleged transfers made to (i) Constance pursuant to Bankruptcy Code Section 548(a), and (ii) Constance, Michael and John Jr. pursuant to Code Section 544(b) (incorporating Conn. Gen. Stat. §§ 52-552, et seq.).

a. Actual Fraud

Bankruptcy Code Section 548(a)(1), provides:

(a) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

(1) made such transfer or incurred such obligation with *actual intent to hinder, delay, or defraud* any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted;

11 U.S.C. § 548(a) (1992) (emphasis added).

Connecticut General Statutes § 52-552(e)(a)(1) – the alternative statutory scheme cited by the Trustee-Plaintiff – also requires proof of an “*actual intent to hinder, delay or*

defraud any creditor of the debtor” (emphasis added) but broadens the one-year look back window of Section 548(a)(1) to four years.

b. Constructive Fraud.

Bankruptcy Code Section provided:

(a) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

* * * *

(2)(A) *received less than a reasonably equivalent value in exchange for such transfer* or obligation; and

(B)(i) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation

* * * *

(c) Except to the extent that a transfer. . . voidable under this section is voidable under section 544, 545, or 547 of this title, a transferee. . . of such a transfer. . . that takes for value and in good faith has a lien or may retain any interest transferred. . . to the extent that such transferee. . . gave value to the debtor in exchange for such transfer. . . .

* * * *

11 U.S.C. § 548 (1992) (emphasis added).

The Trustee-Plaintiff bears the ultimate burden of proof on all of the elements of a constructively fraudulent transfer under Section 548(a)(2); and the Defendants must carry the burden of proving the elements of an affirmative defense under Section 548(c).

Connecticut General Statutes § 52-552(f)(a) – the alternative statutory scheme cited by the Trustee-Plaintiff – also requires proof that “the debtor made the transfer or incurred the obligation *without receiving a reasonable equivalent value in exchange for the transfer or obligation*” (emphasis added) but broadens the one-year look back window of Section 548(a)(2) to four years.

2. Preferential transfers.

The Trustee-Plaintiff also seeks to avoid certain transfers to Constance as “preferential” under the authority of Bankruptcy Code Section 547 and Connecticut General Statutes §§ 52-552, et seq. Section 547 provides in relevant part as follows:

(a) In this section—

* * * *

(2) "new value" means money or money's worth in goods, services, or new credit, or release by a transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the debtor or the trustee under any applicable law, including proceeds of such property, but does not include an obligation substituted for an existing obligation;

* * * *

(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property—

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made--

(A) on or within 90 days before the date of the filing of the petition; or

(B) between 90 days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if--

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title. . . .

(c) The trustee may not avoid under this section a transfer—

(1) to the extent that such transfer was—

(A) intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and

(B) in fact a substantially contemporaneous exchange;

(2) to the extent that such transfer was—

(A) in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee; and

(B) made in the ordinary course of business or financial affairs of the debtor and the transferee; and

(C) made according to ordinary business terms;

* * * *

(4) to or for the benefit of a creditor, to the extent that, after such transfer, such creditor gave new value to or for the benefit of the debtor—

(A) not secured by an otherwise unavoidable security interest; and

(B) on account of which new value the debtor did not make an otherwise unavoidable transfer to or for the benefit of such creditor;

* * * *

11 U.S.C. § 547 (1995).

The Trustee-Plaintiff bears the ultimate burden of proof by a preponderance of the evidence on all of the elements of a preferential transfer under Section 547(b); and the Defendants must carry the burden of proving any affirmative defenses of Section 547(c).

See 11 U.S.C. § 547(g) (1995).

Connecticut General Statutes § 52-552f(b) – the alternative statutory scheme cited by the Trustee-Plaintiff permitting avoidance of preferential transfers – requires proof of a transfer by the Debtor

“to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time and the insider had reasonable cause to believe the debtor was insolvent.”

Like Section 547(c) Connecticut General Statutes § 52 -552i(f) provides, *inter alia*,

A transfer is not voidable under subsection (b) of section 52-552f: (1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made . . . , (2) if made in the ordinary course of the business of the debtor and the insider, or

B. Analysis of the Transfers

1. Defendant Constance Kronberg (Adv. Pro. No. 98-3104).

a. As Actually Fraudulent Transfers

In Counts Two and Four of his Complaint, the Trustee-Plaintiff seeks to avoid and recover transfers to Constance of \$1,254.38 made within the one-year pre-petition period, and \$28,986.40 made within the four-year pre-petition period, for actual fraud pursuant to Sections 548(a)(1) and C.G.S. §§ 52-552e&h, respectively.

As a preliminary matter the Court notes that in a Memorandum of Decision on Trustee’s Complaint to Avoid Fraudulent Transfer and for Payment on a Note, filed this same date in Michael J. Daly, Trustee v. American Stonecrafters, Inc., Adversary Proceeding No. 96-3202 (hereafter, “Daly v. American”) ⁹, this Court found overwhelming

⁹Familiarity with *Daly v. American* is presumed.

evidence of the Kronbergs' fraudulent and/or obstructive intent in connection with the orchestration of a transfer of all of the Debtor's property to American Stonecrafters, Inc.,¹⁰ and, consequently, avoided that transfer pursuant to Code Section 548(a)(1). In Daly v. American the Court also regarded the Kronbergs as individuals willing to engage in fraud to obtain money from lenders, and found such conduct indicative of a predisposition to engage in fraudulent and obstructive conduct as a means of addressing the identical financial peril which led to the avoidable transfer of all of its assets to American Stonecrafters, Inc.

Nevertheless, the aforementioned factual findings in Daly v. American do not aid the Trustee-Plaintiff in this proceeding. Daly v. American concerned the Kronbergs' desperate transfer of *all the Debtor's assets* in an attempt to continue in the family "stone cutting" business – then foundering in the wake of a \$300,000.00 embezzlement, and doomed by extraordinary tax debt. The relevant transfers in the instant proceeding - predominantly petty cash exchanges and expense reimbursements – were routine and quite common transactions in the ordinary course of the Debtor's business operations.

In the instant proceedings the Trustee-Plaintiff's argument for a finding of actual fraud is pointed and simple. He suggests that the Court "infer fraudulent intent from the evidence introduced at trial, including without limitation, the evidence of the Debtor's insolvency and the evidence that the Defendant is an insider of the Debtor". Plaintiff's Post-

¹⁰American Stonecrafters, Inc., like the Debtor, was controlled by the Kronbergs, and was an "insider" of the Debtor as that term is defined in Section 101(31)(B), (E) and (F) of the Bankruptcy Code.

Trial Brief, Doc. I.D. No. 35, at p. 8.¹¹ As noted earlier, each of the Defendants is an “insider” of the Debtor. In addition, for purposes of this adversary proceeding the Court assumes, *arguendo*, that the Debtor was insolvent at the time of *each* transfer in this proceeding. However, the record of this proceeding presents no other evidence to support the requisite finding – *that an actual intent to hinder, delay or defraud* attended any relevant transfer. Indeed, with regard to the alleged transfers, the testimony and documentary evidence is indicative of only ordinary non-fraudulent business transactions.

The Trustee-Plaintiff has the initial and the ultimate burden of proof by a preponderance of the evidence on all of the elements of a fraudulent transfer, see Rubin v. Manufacturers Hanover Trust Co., 661 F.2d 979, 993 (2d Cir.1981). The Trustee-Plaintiff has failed to satisfy his burden of proving that any relevant transfer in this proceeding was motivated by an intent to “hinder, delay, or defraud any entity” or “creditor of the debtor” within the meaning of subsection (a)(1) of Section 548, or Connecticut General Statutes § 52-552e(a)(1). Accordingly, judgment shall enter in favor of the Defendant Constance on Counts Two and Four in Adversary Proceeding No. 38-3104.

b. As Constructively Fraudulent Transfers

In Counts One and Three of his Complaint the Trustee-Plaintiff seeks to avoid and recover transfers to Constance of \$1,254.38 made within the one-year pre-petition period, and \$28,986.40 made within the four-year pre-petition period, for constructively fraudulent transfers

¹¹Responding to the Trustee-Plaintiff’s Post-Trial Brief, counsel for the Defendants “assumed that the Plaintiff is not pursuing [an intentional fraud theory] because the plaintiff has recited no evidence of intentional fraud in its brief.” *Defendant’s Post Trial Brief*, Doc. I.D. No. 36, at p. 15.

pursuant to Sections 548(a)(2) and C.G.S. §§ 52-552f(a), respectively.

Under Section 548(a)(2) - the so-called “constructive fraud” aspect of Section 548 - and applicable Connecticut law, in order to avoid a transfer as constructively fraudulent there must be evidence, *inter alia*, of less than “reasonably equivalent value” received in exchange for the transferred property. The Trustee-Plaintiff’s argument for a finding of constructive fraud as to this element of proof is also pointed and simple. In effect, he argues that he established a *prima facie* case by presenting documentary and testimonial evidence reflecting that at the time of each transfer the Debtor received no consideration, and thus received “less than a reasonably equivalent value in exchange for” each transfer. Therefore, noting that “the defense is essentially that [Constance] used the [transfers] to reimburse employees for business-related expenses”, the Trustee-Plaintiff argues:

“the Defendant [Constance] is liable . . . unless she can prove that the funds she obtained by cashing the checks were actually used for legitimate business expenses of the Debtor. Although the Debtor provided voluminous receipts, she did not meet her burden of proving that the receipts reflected purchases for the Debtor’s benefit or that the Payments were, in fact, made for expenses of the debtor. *Absent credible evidence that the Payments were, in fact, made for specific legitimate expenses incurred on behalf of the debtor, the Plaintiff established that the debtor did not receive reasonably equivalent value in exchange for the Payments.*

Plaintiff’s Post-Trial Brief, Doc. I.D. No. 36, at p. 6 (emphasis added).

Assuming, *arguendo*, that Constance had the burden to produce credible evidence that the transfer payments were for specific legitimate expenses incurred on behalf of the Debtor, she has met that burden. In this regard, the Court finds the testimony of Constance to be credible and corroborated by (i) the voluminous documentary evidence introduced at trial, (ii) the testimony of Donna Kowalski – the Debtor’s bookkeeper, and (iii) the Affidavit of John Kronberg, Jr. The alleged transfers to Constance in this proceeding were in

exchange for the Debtor's receipt of reasonably equivalent value – (i) her promise to pay – and actual payment – upon the cashing of each check, an equivalent monetary amount into the Debtor's petty cash account, and/or (ii) her direct reimbursement of the Debtor's employees for legitimate business expenses. Accordingly, judgment shall enter in favor of the Defendant Constance on Counts One and Three in Adversary Proceeding No. 38-3104.

c. As Preferential Transfers

In Counts Five and Six of his Complaint, the Trustee-Plaintiff seeks to avoid and recover transfers to Constance totaling \$1,254.38 as preferential transfers made within the one-year pre-petition period pursuant to C.G.S. §§ 52-552b(7), c, f(b) & h and Section 547(b), respectively.

The relevant transfers were accomplished by one check payable to Constance and two checks payable to Cash and endorsed by Constance as follows:

<u>Date</u> (1995)	<u>Check No.</u>	<u>Payee</u>	<u>Amount</u>
June 22	7512	Connie Kronberg	\$254.38
September 14	7167	Cash	\$500.00
October 17	4852	Cash	\$500.00

Check No. 7512, one of Constance's computer generated weekly payroll checks, see Tr. 11/23/98 at p. 58, is a periodic and routine wage payment to her for services rendered by her in the ordinary course of the business or financial affairs of the Debtor according to ordinary business terms, and therefore, is excepted from preference attack by Section 547(c)(2) and C.G.S. § 52-552i(f)(2).

The evidence revealed that check Nos. 7167 and 4852 were cashed by Constance as a funding mechanism for the Debtor's petty cash account. Therefore, the Trustee-Plaintiff has failed to carry his burden of proving these transfers were "for or on account of an antecedent debt owed by the debtor before such transfer was made" as required by Section 547(b)(2) and C.G.S. § 52-552f(b). Accordingly, judgment shall enter in favor of the Defendant Constance on Counts Five and Six in Adversary Proceeding No. 38-3104.

2. Defendant Michael Kronberg (Adv. Pro. No. 98-3107).

a. As Actually Fraudulent Transfers

In Count Two of his Complaint the Trustee-Plaintiff seeks to avoid and recover transfers to Michael totaling \$2,775.00 made within the four-year pre-petition period for actual fraud pursuant to Bankruptcy Code Section 544(b) and C.G.S. §§ 52-552e. However, as previously noted, the record of this proceeding is indicative of only ordinary non-fraudulent business transactions and will not support the requisite finding – *that an actual intent to hinder, delay or defraud* attended any transfer to Michael.

The Trustee-Plaintiff has failed to satisfy his burden of proving that any relevant transfer to Michael was attended by the requisite intent to "hinder, delay, or defraud" of C.G.S. § 52-552(e)(a)(1). Accordingly, judgment shall enter in favor of the Defendant Michael on Count Two in Adversary Proceeding No. 98-3107.

b. As Constructively Fraudulent Transfers

In Count One of his Complaint the Trustee-Plaintiff seeks to avoid and recover the subject transfers to Michael as constructively fraudulent pursuant to Bankruptcy Code Section 544(b) and C.G.S. § 52-552c, f(a), alleging, *inter alia*, "the Debtor made the

Transfers to the Defendant without receiving a reasonably equivalent value”
Complaint, ¶ 14.

The relevant transfers consist of the following: (i) a reimbursement for materials and travel expenses incurred incident to a business trip in the amount of \$890.00, (ii) two salary checks totaling \$750.00, and (iii) five checks totaling \$1,510.00 cashed by Michael to replenish the petty cash account. In connection with each of these transfers the evidence reflects that the Debtor received a reasonably equivalent value in property, services, and/or a promise of the same. .

Accordingly, the Trustee-Plaintiff has failed to carry his burden of proof as to C.G.S. § 52-552c, f(a), and judgment shall enter in favor of the Defendant Michael on Count One in Adversary Proceeding No. 98-3107.

3. Defendant John Kronberg (Adv. Pro. No. 98-3108).

a. As Actually Fraudulent Transfers

In Count Two of his Complaint the Trustee-Plaintiff seeks to avoid and recover transfers to John, Jr. totaling \$2,605.60 made within the four-year pre-petition period for actual fraud pursuant to Section 544(b) and C.G.S. §§ 52-552e. However, as previously noted, the record of this proceeding is indicative of only ordinary non-fraudulent business transactions and will not support the requisite finding – *that an actual intent to hinder, delay or defraud* attended any transfer to John, Jr.

The Trustee-Plaintiff has failed to satisfy his burden of proving that any relevant transfer to John, Jr. was attended by the requisite intent to “hinder, delay, or defraud” of C.G.S. § 52-552(e)(a)(1). Accordingly, judgment shall enter in favor of the Defendant John, Jr. on Count Two in Adversary Proceeding No. 98-3108.

b. As Constructively Fraudulent Transfers

In Count One of his Complaint the Trustee-Plaintiff seeks to avoid and recover the subject transfers to John, Jr. as constructively fraudulent pursuant to Bankruptcy Code Section 544 and C.G.S. § 52-552c, f(a), alleging, *inter alia*, “the Debtor made the Transfers to the Defendant without receiving a reasonably equivalent value” Complaint, ¶ 13. The record reflects that the relevant transfers to John Jr. consisted of a wage payments for work actually performed on behalf of the Debtor for which the Debtor received a reasonably equivalent value.

Accordingly, the Trustee-Plaintiff has failed to carry his burden of proof as to C.G.S. § 52-552c, f(a), and judgment shall enter in favor of the Defendant John, Jr. on Count One in Adversary Proceeding No. 98-3108.

IV. CONCLUSION

For the foregoing reasons, judgment shall enter as follows in each of these adversary proceedings:

Adversary Proceeding No. 98-3104 – judgment for the Defendant Constance Kronberg on all Counts.

Adversary Proceeding No. 98-3107 – judgment for the Defendant Michael Kronberg on all Counts.

Adversary Proceeding No. 98-3108 – judgment for the Defendant John Kronberg, Jr. on all Counts.

Separate judgments shall enter this same day. This Memorandum of Decision shall constitute the Court’s Findings of Fact and Conclusions of Law for the purposes of Fed. R. Bank. P. 7052.

BY THE COURT

DATED: January 21, 2003

Albert S. Dabrowski
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:)
STONECRAFTERS, LTD.,) CASE NO. 96-30422 (ASD)
)
DEBTOR.) CHAPTER 7

MICHAEL J. DALY,)
CHAPTER 7 TRUSTEE,)
PLAINTIFF,)

vs.

)
)
)
)

Adv. Pro. No. 98-3104

CONSTANCE KRONBERG,
DEFENDANT.

JUDGMENT

This proceeding having come before the Court after trial, and the Court having entered its Consolidated Memorandum of Decision on Complaints to Avoid Transfers this same date, in accordance with which it is hereby

ORDERED that judgment shall enter in favor of the Defendant Constance Kronberg on all Counts of the Complaint, with each party to bear its own costs.

BY THE COURT

DATED: _____

Albert S. Dabrowski
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:)
STONECRAFTERS, LTD.,) CASE NO. 96-30422 (ASD)
)
DEBTOR.) CHAPTER 7

MICHAEL J. DALY,)
CHAPTER 7 TRUSTEE,)
PLAINTIFF,)
vs.) Adv. Pro. No. 98-3107
)
MICHAEL KRONBERG,)
DEFENDANT.)

JUDGMENT

This proceeding having come before the Court after trial, and the Court having entered its Consolidated Memorandum of Decision on Complaints to Avoid Transfers this same date, in accordance with which it is hereby

ORDERED that judgment shall enter in favor of the Defendant Michael Kronberg on all Counts of the Complaint, with each party to bear its own costs.

BY THE COURT

DATED: _____

Albert S. Dabrowski
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:)
STONECRAFTERS, LTD.,) CASE NO. 96-30422 (ASD)
)
DEBTOR.) CHAPTER 7

MICHAEL J. DALY,)
CHAPTER 7 TRUSTEE,)
PLAINTIFF,)
vs.) Adv. Pro. No. 98-3108
)
JOHN KRONBERG, JR.,)
DEFENDANT.)

JUDGMENT

This proceeding having come before the Court after trial, and the Court having entered its Consolidated Memorandum of Decision on Complaints to Avoid Transfers this same date, in accordance with which it is hereby

ORDERED that judgment shall enter in favor of the Defendant John Kronberg, Jr. on all Counts of the Complaint, with each party to bear its own costs.

BY THE COURT

DATED: _____

Hon. Albert S. Dabrowski
United States Bankruptcy Judge