2015 IL App (2d) 141127-U
No. 2-14-1127
Order filed September 30, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

GOLDEN EAGLE COMMUNITY BANK, Plaintiff-Appellee, v. THE REGO GROUP, LTD., EFSTATHIOS A. REGOPOULOS, THE EFSTATHIOS A. REGOPOULOS 1998 LIVING TRUST, ELAINE B. REGOPOULOS, THE ELAINE B. REGOPOULOS 1998 LIVING TRUST, EVAN E. REGOPOULOS, THE EVAN E. REGOPOULOS 2006 LIVING TRUST, GEORGINA E. PAPPAS, THE GEORGINA E. PAPPAS 2006 LIVING TRUST, STACIE E. REGOPOULOS, THE STACIE E. REGOPOULOS 2006 LIVING TRUST, THE REGO FAMILY, LLC, and UNKNOWN GRANDCHILDREN OF EFSTATHIOS A. REGOPOULOS AND ELAINE B. REGOPOULOS, Defendants-Appellants, (Dana E. Spiro and The Dana E. Spiro 2002 Living Trust, Defendants).	)	Appeal from the Circuit Court of McHenry County. No. 13-CH-891 Honorable Michael J. Chmiel, Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Burke and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not err in granting summary judgment in favor of the plaintiff.

¶ 2 The circuit court of McHenry County granted summary judgment for the plaintiff, Golden Eagle Community Bank, on its claim to void the 2009 transfer of 102 silver bars from one defendant, The Rego Group, Ltd., to other defendants, pursuant to the Illinois Uniform Fraudulent Transfer Act (Act) (740 ILCS 160/1 *et seq*. (West 2008)). The trial court later entered judgment against the defendants[1] in the amount of $520,997.22 plus costs and interest, and denied the defendants' motion to reconsider. The defendants now appeal, raising a variety of arguments. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The Rego Group, Ltd. (Rego Group) is a family-owned Illinois corporation engaged in real estate development. It is managed by Efstathios Regopoulos. According to Rego Group financial statements, in 2008 Rego Group had a net worth of over $25 million. Its assets included 102 silver bars worth over $1 million. According to affidavits by Efstathios, the silver bars were held in the vault of HSBC Bank as security for a loan from HSBC to Rego Group. The 2007 and 2008 Rego Group financial statements list real estate loans as Rego Group's only liabilities. Of the loans listed on the statements, there was only one loan for which HSBC was

[1] Although Dana E. Spiro and The Dana E. Spiro 2002 Living Trust were named as defendants, they never filed an appearance or answer in this action, and the motion for summary judgment was not directed toward them and they are not parties to this appeal. On December 3, 2014, after this appeal was filed, they were voluntarily dismissed from the case without prejudice to reinstatement. As used herein, the term "defendants" refers to all of the other defendants.

listed as a lender (along with Harris Bank): a 2008 loan in the amount of $2,150,250, which was secured by a mortgage on property with a stated market value of $2,150,000. The record does not contain any other information about any HSBC loan.

¶ 5 In July 2008, the plaintiff loaned Rego Group $1.484 million. This loan was secured by the personal guaranty of Efstathios and a mortgage on real property involved in the Fountain Square real estate project in Algonquin. At the time of the loan, the property's value had been appraised at over $2 million. Prior to receiving the loan, Rego Group provided the plaintiff with the financial statements that listed the silver bars among its assets.

¶ 6 In January 2009, Rego Group transferred ownership of the silver bars, distributing them to the self-settled living trusts of Efstathios, his wife Elaine Regopoulos, and their four children, Dana Spiro, Evan Regopoulos, Georgina Pappas, and Stacie Regopoulos. The distribution was made *pro rata* in accord with each family member's interest in Rego Group, with the result that Efstathios' trust received 28 silver bars, Elaine's trust received 10 silver bars, and the children's trusts collectively received 64 silver bars. The silver bars received by the children's trusts were immediately transferred to The Rego Family, LLC (Rego Family), a limited liability corporation managed by Efstathios of which the children were shareholders. Efstathios facilitated the ownership transfers from the children's trusts to Rego Family.

¶ 7 Elaine later transferred ownership of some of her trust's silver bars to grandchildren. However, according to Efstathios' affidavits, despite all of these transfers of the ownership of the silver bars, the physical location of the bars remained unchanged: they continued to be held in the HSBC vaults until December 2009, when Rego Group paid off the HSBC loan.

¶ 8 In January 2010, Efstathios's trust transferred the ownership of its 28 silver bars to Elaine's trust, and the silver held by Elaine's trust was used to secure a loan from JP Morgan Chase to the trust. Thereafter, the silver was held in the vaults of JP Morgan Chase.

¶ 9 In February 2011, the plaintiff's loan to Rego Group came due. It was not paid. On March 11, 2011, the plaintiff filed two suits in the circuit court of McHenry County: an action against Rego Group, seeking to foreclose on the property securing the loan, and an action against Efstathios based upon his personal guaranty of the loan. The property was sold in foreclosure, and a deficiency judgment of $443,647.91 was eventually entered in favor of the plaintiff in both actions.

¶ 10 Ten days later, the plaintiff filed a citation to discover assets against Efstathios and the living trusts of Efstathios and Elaine. On April 15, 2013, during the citation proceedings, Efstathios submitted an affidavit in which he detailed the transfers of the silver bars from Rego Group to Rego Family and the living trusts of himself and Elaine.

¶ 11 On May 8, 2013, the plaintiff filed the present action, seeking to void the 2009 transfers of the silver bars pursuant to section 5(a)(1) of the Act (740 ILCS 160/5(a)(1) (West 2012)). The defendants' attorney filed an appearance on July 2, 2013, and an answer and affirmative defenses on August 7, 2013.

¶ 12 On September 30, 2013, the plaintiff served a large stack of discovery upon the defendants. Among the documents in the stack were sets of requests to admit addressed to each of the defendants pursuant to Supreme Court Rule 216 (eff. May 1, 2013). Each set of requests to admit was a separate document, and each bore the following caution in bold print on the first page:

> **"WARNING: If you fail to serve the response required by Rule 216 within 28 days after you are served with this document, all the facts set forth in the requests will be deemed true and all the documents described in the requests will be deemed genuine."**

¶ 13 The requests to admit sought the admission or denial of certain statements by each of the defendants. The statements that were later relied upon by the parties and the trial court during the summary judgment proceedings included the following (the plaintiff is referred to as the Bank in these statements):

"Request # 1: *** [Y]ou failed to specifically obtain the Bank's approval when transferring the silver bars on January 15, 2009 from the Rego Group, Ltd. to the [living trusts of the Regopoulos family, referred to collectively as "the other entities"].

Request # 2: *** [Y]ou failed to inform the Bank of the actual transfer of the silver bars after it occurred until April 15, 2013 ***.

Request # 3: *** [Y]ou failed to inform the Bank of the current location of the silver bars until April 15, 2013 ***.

* * *

Request # 6: *** Efstathios A. Regopoulos directed and/or controlled the transfer of the silver bars from The Rego Group, Ltd. to the other entities.

Request # 7: *** [T]he transfers of the silver bars from The Rego Group, Ltd. to the other entities were to trusts held by family members.

Request # 8: *** [T]he transfers were to closely-held entities.

* * *

Request # 10: *** Efstathios A. Regopoulos directed and/or controlled the transfer of the silver bars from the other entities back to The Rego Family, LLC.

* * *

Request # 12: *** Efstathios A. Regopoulos is the manager of The Rego Family, LLC.

Request # 13: *** Efstathios A. Regopoulos is the principal of The Rego Group, Ltd.

Request # 14: *** [T]he silver bars were transferred from The Rego Group, Ltd., which Efstathios A. Regopoulos is the manager [*sic*] of, to trusts of your family members and back to The Rego Family, LLC, which Efstathios A. Regopoulos is the principal [*sic*] of.

Request # 15: *** [T]he silver bars are assets that could serve to pay down the loan if they were still in the possession of The Rego Group, Ltd.

Request # 16: *** [Y]ou failed to inform any creditor of The Rego Group, Ltd. of the transfer of the silver bars on January 15, 2009 after it occurred.

Request # 17: *** [T]he distribution of the silver bars from The Rego Group, Ltd. was to hide assets of The Rego Group, Ltd.

Request # 18: *** [T]he distribution of the silver bars from the Rego Group Ltd was to hinder or delay creditors from having a claim to assets that could serve to repay the any [*sic*] deficiency amounts on loans.

* * *

Request # 21: *** Efstathios A. Regopoulos personally owns the assets of The Rego Group, Ltd.

Request # 22: *** Efstathios A. Regopoulos personally owns the assets of The Rego Family, LLC.

Request # 23: *** [T]he Bank loaned The Rego Group, Ltd. money on July 2, 2008 and The Rego Group, Ltd. signed a note to memorialize the loan in which [*sic*] Efstathios A. Regopoulos personally guaranteed.

Request # 24: *** [T]he transfers of the silvers from the Rego Group, Ltd. to the other entities and the transfer from the other entities to the Rego Family, LLC all occurred on the same day.

Request # 25: *** [T]he distribution of the silver bars from The Rego Group, Ltd. occurred a little over six months after The Rego Group, Ltd. obtained a loan from the Bank."

¶ 14 The proof of service for the requests to admit was filed on September 30, 2013. No responses were filed. On November 12, 2013, the defendants filed an amended answer and amended affirmative defenses. The affirmative defenses raised arguments based upon the statute of limitations, laches, and setoff. The plaintiffs did not file any response to the affirmative defenses.

¶ 15 On December 2, 2013, the plaintiff moved for summary judgment, arguing that, as a result of the admissions that the defendants were deemed to have made by failing to respond to the requests to admit, it was entitled to an order voiding the 2009 transfers of the silver bars. Although one of the requests to admit (request no. 18) had sought the admission of an "ultimate" fact—that the transfer of the silver "was to hinder or delay creditors" of Rego Group—the plaintiff did not cite or rely on this admission in its motion. Instead, the plaintiff relied upon other admissions as establishing the presence of various "badges of fraud" that indirectly demonstrated the defendants' actual intent to impair the rights of its creditors.

¶ 16 In their response to the motion, the defendants did not argue that they should not be deemed to have made the admissions cited by the plaintiff. Rather, they argued that the silver was not an "asset" reachable under the Act because it was encumbered by HSBC's lien at the time of the transfer, and that genuine questions of material fact remained that precluded the entry

of summary judgment. Both parties also raised arguments about the merits of the affirmative defenses asserted by the defendants.

¶ 17 In its reply brief, the plaintiff raised a new argument: it argued that the admission to request no. 18 was sufficient in itself to mandate summary judgment in the plaintiff's favor.

¶ 18 Oral argument on the motion for summary judgment was held on January 23, 2014. At oral argument, for the first time, the defendants attacked the requests to admit, arguing that they were improper in form and thus should not be construed as having given rise to admissions. The defendants also argued that the plaintiff had waived the right to rely on the "ultimate" admission to request no. 18 by introducing other evidence—the badges of fraud—on the issue of whether the transfer was motivated by an intent to defraud creditors. At the close of the oral argument, the trial court took the matter under advisement, telling the parties that it would issue its decision on March 20, 2014.

¶ 19 Two days before the trial court's scheduled date for announcing its decision, the defendants filed a motion seeking an extension of time to file their responses to the requests to admit. The motion argued that the requests were improper in form because they did not comply with Supreme Court Rule 216(g), and that there was good cause to grant the extension pursuant to Supreme Court Rule 183 (eff. Feb. 16, 2011). In support of their motion, the defendants submitted the affidavit of their attorney, who averred that the requests to admit had been mailed to the attorney's Chicago office as part of a single package of discovery; when the discovery was forwarded to the attorney's suburban office, it was misplaced; when the attorney located the discovery, it did not include the requests to admit; and the attorney did not know of the existence of the requests to admit until she reviewed the plaintiff's motion for summary judgment on December 2, 2013. In addition, the defendants filed copies of the responses to the requests to admit, which they sought leave to substitute for the wholesale admissions that occurred through

their failure to respond timely to the requests to admit. The motion for extension of time was noticed up for presentation on the same date that the trial court was set to announce its decision on the motion for summary judgment, *i.e.*, March 20, 2014.

¶ 20 The trial court rendered its decision at the previously-set time, issuing a 24-page memorandum opinion explaining its decision to grant summary judgment in favor of the plaintiff. In its memorandum opinion, the trial court found that the unanswered requests to admit constituted conclusive admissions of the facts stated in those requests to admit, and it noted that none of the written materials or evidence submitted by the defendants addressed those requests to admit. The trial court found that two of the admitted facts were dispositive of the issue of whether the transfer of the silver bars was made with the intent to defraud creditors: request no. 17 stated that "the distribution of the silver bars *** was to hide assets of The Rego Group, Ltd.," and request no. 18 stated that "the distribution of the silver bars *** was to hinder or delay creditors." The trial court also held that, even if these two admissions were not considered, the plaintiff had established the requisite intent by presenting evidence of five "badges of fraud" (factors used to determine whether fraudulent intent is present, set out in section 5(b) of the Act (740 ILCS 160/5(b) (West 2012)). Finally, the trial court held that the admissions defeated the affirmative defenses raised by the defendants. Accordingly, the trial court granted summary judgment for the plaintiff and ordered the parties to draft a judgment order.

¶ 21 On May 7, 2014, the trial court entered a judgment order that: incorporated its earlier opinion; voided the 2009 transfers of the silver; found that, as of April 10, 2014, the amount of the judgment was $520,997.22 plus costs plus statutory interest of nine percent still accruing; required the defendants to deposit the silver with Dalzell & Co. of Crystal Lake for the purpose of liquidating it to pay the judgment amount; and enjoined the defendants from making any further dispositions or transfers of the silver bars. The order required the defendants to inform

the plaintiff within seven days of the current location of the silver bars and provide the plaintiff with "all documentary evidence regarding all liens or encumbrances on this silver," and to inform the court within seven days if there was any reason why the silver bars could not be transferred to Dalzell & Co. as ordered, including a valid lien or lack of possession. In the event that the silver bars could not be transferred, the order set out the liability of each defendant for payment of the judgment amount and provided that all of the real and personal assets of each defendant were impressed and transfers or other dispositions of such property were barred until such time as each defendant had satisfied that defendant's liability. Finally, the trial court found that there was no just reason to delay enforcement or appeal of the order.

¶ 22 The defendants moved for reconsideration. Their motion repeated their previous argument that the silver was not an asset reachable under the Act because it was encumbered by a lien, and expanded upon the arguments they had raised at oral argument that the requests to admit were improperly served and improper in form. They also raised a new argument, contending for the first time that the plaintiff had waived its ability to rely on the defendants' admissions relating to the badges of fraud by citing to other evidence (affidavits by Efstathios and Duellman) in its summary judgment motion. Finally, they asserted that the May 7, 2014, judgment order was improper in certain respects. The plaintiff opposed the motion, arguing that the defendants had not shown grounds for reconsideration.

¶ 23 The trial court denied the motion, finding untimely and "amazing" the defendants' decision to wait months before asking to file late responses to the requests to admit. The trial court also faulted the defendants for failing to put forward any evidence showing the amount of the HSBC lien they asserted existed on the silver bars, and rejected their complaints about the judgment order. The trial court did not directly address the defendants' argument that the plaintiff had waived its ability to rely on the requests to admit by submitting additional evidence;

however, it noted that the purpose of reconsideration was not to provide parties with "a second bite at the apple" in which they could raise arguments they had failed to raise earlier. Lastly, the trial court found that there was no just reason to delay enforcement or appeal of the order.

¶ 24 II. ANALYSIS

¶ 25 In their notice of appeal, the defendants stated that they sought relief from the trial court's orders of March 20, 2014 (granting summary judgment for the plaintiff); May 7, 2014 (setting the terms of the judgment); June 24, 2014 (denying the defendants' motion to stay enforcement); and October 29, 2014 (denying the motion for reconsideration). On appeal, the defendants have offered no argument regarding the order dated June 24, 2014, and so have forfeited any review of that order. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). We consider only the arguments relating to the other three orders. First, however, we outline the Act under which the plaintiff brought its action.

> "The Uniform Fraudulent Transfer Act was enacted to enable a creditor to defeat a debtor's transfer of assets to which the creditor was entitled. 740 ILCS 160/5 (West 2008); see *Rush University Medical Center v. Sessions*, 2012 IL 112906, ¶ 20. The purpose of the Act is to 'invalidate otherwise sanctioned transactions made with a fraudulent intent.' *In re Marriage of Del Giudice*, 287 Ill. App. 3d 215, 218 (1997). The Act supplements [rather than displaces] common law principles of 'law and equity ***.' 740 ILCS 160/11 (West 2008); *Rush University Medical Center*, 2012 IL 112906, ¶ 18." *Northwestern Memorial Hospital v. Sharif*, 2014 IL App (1st) 133008, ¶ 16.

¶ 26 The plaintiff's claim seeking to void the transfer of the silver bars was founded on section 5(a)(1) of the Act, which permits a court to set aside transfers of a debtor's assets made "with actual intent to hinder, delay or defraud any creditor." 740 ILCS 160/5(a)(1) (West 2012); *Apollo Real Estate Investment Fund, IV, L.P. v. Gelber*, 403 Ill. App. 3d 179, 193 (2010). The

requirement of "actual intent" under the Act should not be equated with fraudulent intent as that term is used in common-law fraud, however. See *Brandon v. Anesthesia & Pain Management Assocs., Ltd.*, 419 F.3d 594, 600 (7th Cir. 2005) (applying the Act and commenting that "[t]he doctrine of 'fraudulent conveyance' has specific elements *** that differ from normal usages of the word 'fraud,' which is therefore best avoided"; in particular, the doctrine of fraudulent conveyance does not require proof of fraudulent intent). "Actual intent," as used in the Act, does not refer to the debtor's individual subjective intent if the circumstances are such that the transfer had the effect of defrauding creditors. "What may be in the mind of the grantor when he makes a voluntary conveyance to his wife or child is immaterial, for, if it results in hindering, delaying, or defrauding creditors, it must be regarded as fraudulent. A donor may make a conveyance with the most upright intentions, and yet, if the transfer hinders, delays, or defrauds his creditors, it may be set aside as fraudulent." *Birney v. Solomon*, 348 Ill. 410, 415 (1932); see also *Sharif*, 2014 IL App (1st) 133008, ¶ 17; *Gelber*, 403 Ill. App. 3d at 193-94.

¶ 27 To sustain a claim of fraudulent transfer, "[d]irect proof of actual intent to defraud is not required—indeed, it would be hard to come by," and thus the requisite intent may be shown by circumstantial evidence. *Frierdich v. Mottaz*, 294 F.3d 864, 869 (7th Cir. 2002). The Act itself sets out a non-exclusive list of 11 factors, often referred to as "badges of fraud," that may be considered in determining whether the debtor had the actual intent to hinder or defraud its creditors. The list includes the following factors relevant here: whether the transfer was to an insider; whether the debtor retained control of the asset after the transfer; whether the transfer was disclosed; whether the debtor "removed or concealed assets"; whether the debtor received consideration "reasonably equivalent" to the value of the asset transferred; whether the debtor was insolvent at the time of the transfer or became so shortly afterward; and whether the transfer occurred shortly after a substantial debt was incurred. 740 ILCS 160/5(b) (West 2012).

¶ 28 The listed factors are merely considerations and a court need not consider all of them in every case. *Bank of America v. WS Management, Inc.*, 2015 IL App (1st) 132551, ¶ 89. "When the factors are present in sufficient number, 'it may give rise to an inference or presumption of fraud.' " *Id.* (quoting *Steel Co. v. Morgan Marshall Industries, Inc.*, 278 Ill. App. 3d 241, 251 (1996)). However, the factors "are not additive" and the number of factors present is not the most important consideration. *Brandon*, 419 F.3d at 600. Rather, the effect of any given factor must be assessed in light of the overall circumstances, and it is possible that the presence of only one factor, if sufficiently telling, could entitle a party to relief. *Id.* If a creditor is successful in raising an inference or presumption of actual intent to defraud creditors via the transfer of an asset, the debtor then bears the burden of putting forward evidence to dispel that presumption. *WS Management*, 2015 IL App (1st) 132551, ¶ 89 (citing *Sharif*, 2014 IL App (1st) 133008, ¶ 31).

¶ 29 On appeal, the defendants raise several arguments. They argue that the trial court erred in granting summary judgment because: the requests to admit did not give rise to incontrovertible admissions for several reasons; the silver was encumbered by a valid lien, and thus was not an asset reachable under the Act; and summary judgment was improperly entered because issues of material fact remained. They also argue that the trial court should have granted their motion pursuant to Supreme Court Rule 183 (eff. Feb. 16, 2011), and that the May 7, 2014, judgment order was improper in several respects. We address each argument in turn.

¶ 30 A. Whether Summary Judgment Was Properly Granted

¶ 31 "The purpose of summary judgment is to determine whether a genuine issue of material fact exists, not to try a question of fact." *Thompson v. Gordon*, 241 Ill. 2d 428, 438 (2011). Therefore, summary judgment is proper only when the pleadings, depositions and admissions on record, together with any affidavits, show that there is no genuine issue as to any material fact

and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2012); *Gaylor v. Village of Ringwood*, 363 Ill. App. 3d 543, 546 (2006).

¶ 32 When reviewing the grant of a motion for summary judgment, we consider only the evidence and arguments that were before the trial court at the time it ruled. *Rayner Covering Systems, Inc. v. Danvers Farmers Elevator Co.*, 226 Ill. App. 507, 509-10 (1992); see also *Simmons v. Reichardt*, 406 Ill. App. 3d 317, 322 (2010). We review the grant of summary judgment under a *de novo* standard (see *Morris*, 197 Ill. 2d at 35), and will reverse if we find that a genuine issue of material fact exists.

¶ 33 1. Rule 216 Admissions

¶ 34 In granting summary judgment for the plaintiff, the trial court relied almost entirely on the admissions created by the defendants' failure to respond to the requests to admit served by the plaintiff. The effect of that failure to respond largely determines the outcome of our own review of that grant. Accordingly, we begin by examining that failure to respond.

¶ 35 Supreme Court Rule 216 states, in pertinent part:

> "(a) Request for Admission of Fact. A party may serve on any other party a written request for the admission by the latter of the truth of any specified relevant fact set forth in the request.
>
> * * *
>
> (c) Admission in the Absence of Denial. Each of the matters of fact *** of which admission is requested is admitted unless, within 28 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either (1) a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters or (2) written objections on the ground that some or all of the requested admissions are

privileged or irrelevant or that the request is otherwise improper in whole or in part. ***" 134 Ill. 2d R. 216. (eff. May 1, 2013).

Under Rule 216(c), the failure to respond to the requests for admissions operates as an admission of all of the statements of fact contained in the requests. *Id.*; *Zwicky v. Freightliner Custom Chassis Corp.*, 373 Ill. App. 3d 135, 140 (2007). The admissions created by the operation of Rule 216(c) are judicial admissions that may not be controverted by the admitting party. *Id.* As such, the admissions may be used as evidence to support a motion for summary judgment. *Id.*

¶ 36 In this case, the plaintiff propounded requests to admit that addressed "actual intent" under the Act in two ways. One of the requests to admit—request no. 18—directly sought the admission of an "ultimate fact," tracking the language of the Act itself: "the distribution of the silver bars *** was to hinder or delay creditors" of Rego Group.[2] Other requests sought admissions that various of the 11 factors enumerated in section 5(b) of the Act (the "badges of fraud") were associated with the transfer, thereby seeking to establish actual intent indirectly. In

[2] The defendants argue that the grammatic structure of this request (and a similar request, no. 17) is so poor that the resulting admission is ambiguous. We disagree: we believe that the ordinary interpretation of the phrase "was to" in the context of this request is "was in order to." Thus, the statement "the distribution *** was to hinder and delay creditors" means "the distribution was in order to hinder and delay creditors." Although the defendants argue that requests no. 17 and 18 can be read as having a different meaning if the words "the consequence of" were inserted before "the distribution of the silver," there is no basis for such an insertion. Rather, as the defendants themselves note, only the actual words of the request may be considered an admission. *Zwicky*, 373 Ill. App. 3d at 142. Accordingly, we reject the argument that admissions no. 17 and 18 were ambiguous.

its memorandum opinion granting summary judgment, the trial court relied on the "ultimate" admission, but it also found that the admissions relating to the badges of fraud provided an alternate basis for summary judgment.

¶ 37 a. Alleged Defects in Manner of Service and Form

¶ 38 In contending that the requests to admit should not be deemed to have given rise to admissions, the defendants first argue that the requests to admit were not properly served under Supreme Court Rule 216(g), and the requests themselves also were not proper in form.

¶ 39 Rule 216(g) rule requires that a party propounding requests to admit must: "(1) prepare a separate document which contains only the requests ***; (2) serve this document separate from other documents;" and (3) put a certain warning in bold type on the first page of the document containing the requests. Ill. S. Ct. R. 216(g) (eff. May 1, 2013). The defendants do not dispute that each set of requests to admit was a separate document, and that each bore the required warning on the first page. However, they argue that the requests were not served "separate from other documents," because all of the requests to admit were served in a single mailing that also contained other discovery requests.

¶ 40 At issue is the meaning of Rule 216(g)'s requirement that requests to admit must be served "separate from other documents." Does this provision simply require that the requests must *not be attached* to other discovery documents, or does it require the requests to be *mailed in a different envelope*? The defendants argue for the latter interpretation and the plaintiff argues for the former, but neither cite legal authority to support their interpretations of the language of the rule. We ourselves are similarly unable to locate any case law on this issue. Some light is shed by the October 1, 2010, committee comment to Rule 216, which states:

> "Paragraphs (f) and (g) are designed to address certain problems with Rule 216, including the service of hundreds of requests for admission. For the vast majority of cases, the

> limitation to 30 requests now found in paragraph (f) will eliminate this abusive practice. Other noted problems include the bundling of discovery requests to form a single document into which the requests to admit were intermingled. This practice worked to the disadvantage of certain litigants, particularly *pro se* litigants, who do not understand that failure to respond within the time allowed results in the requests being deemed admitted. Paragraph (g) provides for requests to be contained in a separate paper containing a boldface warning regarding the effect of the failure to respond within 28 days. *** " Ill. S. Ct. R. 216 (Oct. 1, 2010, Committee Comments).

On one hand, these comments suggest that the goal of Rule 216(g) is to ensure that litigants receive adequate notice of both the existence of requests to admit and the consequences of failing to respond to such requests—a goal that would be advanced by requiring requests to admit to be served in a separate envelope. On the other hand, the comments single out as problematic only the intermingling of requests to admit with other discovery in a single document, and focus on the requirement that such requests be contained in a separate document, without any mention of separate mailing.

¶ 41 Ultimately, we need not resolve this question, however. Even if the plaintiff's initial service of the requests to admit was improper, it is undisputed that, no later than December 3, 2013, the defendants received copies of the requests to admit in a manner that unequivocally called attention to them—the requests were attached to the plaintiff's motion for summary judgment. Thus, any deficiency in the initial service of the requests to admit was remedied no later than that date. Under these circumstances, while the potentially improper service might provide a reason to delay the start of the 28-day response period until the proper service occurred, it would not permit the defendants to assert that they need not respond in any way to those requests. Nothing in Rule 216 suggests that a technical defect (that is later cured) permits a

party to ignore with impunity the requests to admit that it receives. Rather, the rule emphasizes the seriousness with which requests to admit should be treated, providing that the requests will give rise to incontrovertible admissions unless responses or objections are made promptly within 28 days. Ill. S. Ct. R. 216(c). The potentially improper service of the requests to admit might well have justified the defendants in seeking additional time to respond to those requests. However, permitting such a technical defect to excuse the defendants entirely from their obligations under the rule would elevate form over substance.

¶ 42 The defendants also argue that the requested admissions are improper in form in various ways: for instance, they assert that the requests seek the admission of "false and contradictory facts," or are confusing or ambiguous. Such defects in form may provide grounds for objecting to requests to admit. *McGrath v. Botsford*, 405 Ill. App. 3d 781, 790 (2010). However, pursuant to Rule 216(c), such objections must be made in writing within the 28 days allowed for a response. It is undisputed that the defendants did not file any such objections. The defendants submitted evidence (an affidavit from their attorney) that the requests to admit were lost or misplaced and were not seen by their attorney until December 2, 2013. However, at that point, nothing prevented the defendants from promptly seeking to remedy the situation. For instance, they could have sought leave to file objections at that point, or promptly filed a motion under Supreme Court Rule 183 for additional time to respond. See *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 343 (2007) ("Rule 183 vests the circuit court with discretion to allow a party to serve a response to requests to admit after the expiration of the 28-day period specified in Rule 216" upon a showing of good cause). Instead, the defendants elected not to do anything, waiting over three months before filing a belated Rule 183 motion. Under these circumstances, we reject the argument that defects in the form of the requests to admit somehow prevented the unanswered requests from giving rise to judicial admissions.

¶ 43 b. Alleged Forfeiture of Right to Rely on Admissions

¶ 44 The defendants next argue that the plaintiff forfeited its right to rely on the admissions, in two ways. First, at oral argument on the motion for summary judgment, the defendants argued that the plaintiff could not rely on the "ultimate" admission because the plaintiff only cited that admission for the first time in its reply brief. As matters may not be raised for the first time in a reply brief, the plaintiff had forfeited its ability to rely on the admission. The defendants repeat this argument on appeal, and we agree with them.

¶ 45 There is no bar to propounding requests to admit an ultimate fact. As our supreme court explained several years ago, the mere fact that a requested admission would dispose of a core issue in the case does not make that request improper. "[W]hile requests to admit may not include legal conclusions, they may include questions of ultimate fact. Moreover, the failure to respond to a request to admit an ultimate fact constitutes an admission which may give rise to a grant of summary judgment." *P.R.S. International, Inc. v. Shred Pax Corp.*, 184 Ill. 2d 224, 239 (1998). Here, however, the plaintiff sought to prove the issue of actual intent indirectly through the badges of fraud, and it did not switch gears and cite the defendants' admission to request no. 18 until its reply brief. Under these circumstances, we hold that the plaintiff forfeited its ability to rely on the defendants' admission to request no. 18. See *CitiMortgage, Inc. v. Bermudez*, 2014 IL App (1st) 122824, ¶ 72 (where issues were raised for the first time in a reply brief, the argument was forfeited).

¶ 46 On appeal, the defendants also raise a second, separate, forfeiture argument: that the plaintiff forfeited its ability to rely on their admissions relating to certain of the badges of fraud, because the plaintiff also introduced other evidence on those specific points. However, the defendants themselves have forfeited this argument, because they did not raise this argument prior to the trial court's ruling on the motion for summary judgment, but only in their motion for

reconsideration. (Although the defendants argue that they raised the issue of forfeiture at oral argument on the motion for summary judgment, this is incorrect: their argument there was limited to arguing that the plaintiff should not be permitted to rely on the "ultimate" admission, as discussed above.) "[P]arties should make a full presentation of evidence and arguments at the initial summary judgment hearing, rather than at a later hearing on a motion to reconsider." *Rayner*, 226 Ill. App. at 510. Accordingly, we do not consider this argument in reviewing the grant of summary judgment. See *id*. at 510-11 (reviewing court considers only those arguments made to the trial court at the initial summary judgment hearing).

¶ 47 In sum, we find that the defendants' failure to respond to the requests to admit gave rise to incontrovertible admissions that could be considered in determining whether summary judgment should be granted, excepting only the "ultimate" admission to request no. 18.

¶ 48 2. Silver Bars as an Asset Under the Act

¶ 49 The defendants next raise a legal argument that they contend demonstrates that the plaintiff is not entitled to summary judgment on its claim under the Act. They assert that the silver bars cannot be counted as an "asset," as that term is defined under the Act, because at the time their ownership was transferred, the bars themselves were the subject of a "possessory lien," being held by HSBC Bank as security for a loan. The defendants argue that the silver bars therefore are not reachable by other creditors such as the plaintiff.

¶ 50 For the purposes of the Act, generally speaking, an "asset" is any "property of a debtor." 740 ILCS 160/2(b) (West 2008). However, the statute also sets out exceptions to this general rule, including one potentially relevant here: the definition of "asset" does not encompass property "to the extent [the property] is encumbered by a valid lien." *Id*. A "valid lien" is one that "is effective against the holder of a [subsequent] judicial lien." 740 ILCS 160/2(m) (West 2008). Thus, although the silver bars were "property of a debtor" (Rego Group) at the time of

the transfer, they would not be an asset subject to the Act to the extent that they were encumbered by a lien that would defeat a judgment creditor's attempt to reach them. *Id.* The defendants themselves concede that an asset is exempt from the Act only to the extent of the lien; if the value of the asset exceeds the amount of the lien, the excess value is still reachable. See *id.*; *Telephone Equipment Network, Inc. v. TA/Westchase Place, Ltd.*, 80 S.W.3d 601, 610 n.6 (Tex. App. 2002) (collecting cases from other states that have adopted the Uniform Fraudulent Transfer Act which hold that the value of property in excess of the amount of liens on that property is reachable as an "asset" under that statute).

¶ 51 In order to defeat a motion for summary judgment, the defendants must show the existence of facts which could support judgment in their favor. "Although the nonmoving party is not required to prove his case in response to a motion for summary judgment, he must present a factual basis that would arguably entitle him to judgment." *Land v. Board of Education for the City of Chicago*, 202 Ill. 2d 414, 432 (2002). The argument that the silver is not an asset reachable under the Act was raised by the defendants in response to the motion for summary judgment. Accordingly, they bear the burden of presenting a factual basis for both elements of that defense—the existence and amount ("extent") of that lien. *South Side Trust & Savings Bank of Peoria v. Mitsubishi Heavy Industries, Ltd.*, 401 Ill. App. 3d 424, 438 (2010).

¶ 52 The defendants have not done so. Instead, although they have presented some evidence (two affidavits by Efstathios) that the silver bars were encumbered by a "possessory lien" held by HSBC[3], they have presented no evidence as to the second element, the amount of that lien.

[3] There is some question regarding whether the silver bars indeed served as collateral for the HSBC loan: although Efstathios averred that the silver was collateral and could not be removed from the HSBC vault until the loan was repaid, the financial statements prepared by

Efstathios's affidavits say only that the silver bars "were encumbered" at the time their ownership was transferred and that they were held in the HSBC vault as collateral for HSBC's loan to Rego Group of a "substantial amount of money." Efstathios also averred that Rego Group could not "physically move the silver bars from HSBC Bank's vault until and unless the outstanding loan was repaid." Regardless of how the silver bars were stored, however, the defendants have not shown that HSBC's possession of the silver bars was the legal equivalent of a lien over the full value of those bars. (To the contrary, insofar as there is any evidence of the amount of the lien in the record, it suggests that it was minimal: Rego Group financial statements show that the HSBC loan was secured not by the silver but by a mortgage on property, the value of which nearly equaled the amount of the loan.) The Act shields only assets that are subject to a legally enforceable lien, and only "to the extent of" that lien. 740 ILCS 160/2(b)(1) (West 2008). As the defendants have not met their burden of proving the amount of the alleged possessory lien on the silver bars, they have not shown how much, if any, of the bars' value is unreachable under the Act. Accordingly, we reject their argument that the silver bars were not an asset whose transfer could be voided under the Act.

¶ 53 3. Whether the Plaintiff Established "Actual Intent"

Rego Group list the silver as an asset worth over $1 million, not as collateral subject to a possessory lien and held by a lender. The lack of any documentary evidence of (1) any recorded security interest in the silver or (2) any designation of the silver as collateral calls into question the validity and enforceability of the alleged possessory lien. Where the retention of collateral by the lender is unknown and thus fails to give notice of the security interest to third parties, that retention of collateral is ineffective to create a security interest. See *Laurel Motors, Inc. v. Airways Transportation Group of Companies, Inc.*, 284 Ill. App. 3d 312, 317 (1996).

¶ 54 Finally, the defendants argue that, even if the admissions relating to the badges of fraud are considered, summary judgment was not proper. They contend that the trial court erred in finding that the plaintiff had established that five of the section 5(b) factors were present with respect to the transfer of the silver. Further, they argue that these factors alone do not establish the plaintiff's entitlement to summary judgment.

¶ 55 The defendants argue that a claim under the Act requires proof of actual intent, and intent by its nature is a question of fact not susceptible to resolution via summary judgment. However, the presence of sufficient badges of fraud can raise a presumption of actual intent and shift the burden to the non-movant to dispel that presumption. *WS Management*, 2015 IL App (1st) 132551, ¶ 89; see also *Kennedy v. Four Boys Labor Services, Inc.*, 279 Ill. App. 3d 361, 369-70 (1996) (finding actual intent and granting summary judgment in favor of plaintiff on claim under section 5(a)(1) of the Act). The defendants also argue that they have shown a factual dispute on the issue of intent through the submission of Efstathios's affidavit, in which he testified that his purpose in transferring the silver was to provide startup capital for his children's new company, Rego Family. However, the subjective intent of the transferor is not dispositive on the issue of "actual intent" under the Act. See *Birney*, 348 Ill. at 414-15 (the test for fraudulent conveyance and actual intent is whether the transfer impaired the rights of creditors, not the transferor's stated intentions); *Sharif*, 2014 IL App (1st) 133008, ¶ 31; *Gelber*, 403 Ill. App. 3d at 193-94. Thus, Efstathios's affidavit is insufficient to show a factual issue if other factors raise a presumption of intent to defraud.

¶ 56 The trial court found that the following badges of fraud were present: the silver was transferred to insiders; Efstathios retained control over the silver after the transfer; the transfer of the silver was concealed from the plaintiff; the debtor removed or concealed assets; and the transfer occurred shortly after Rego Group obtained the loan from the plaintiff. In their briefs,

the defendants have conceded the existence of one of these factors—that the silver was transferred to "insiders" as that term is defined in the Act. See 740 ILCS 160/2(g) (West 2008). We therefore analyze the evidence as to each of the other four factors.

¶ 57 *The debtor retained possession or control of the asset after the transfer*. The defendants concede that Efstathios is both the manager of Rego Group, which distributed the silver to the self-settled trusts of the members of the Regopoulos family, and the principal of Rego Family, which ultimately received 64 of the 102 silver bars. Thus, Efstathios controlled both the entity that transferred the silver and the entity that received most of the silver. (In addition, it is undisputed that Efstathios's own trust directly received 28 silver bars in the transfer.) The defendants argue that Efstathios's management position in the two companies is not the same as "retaining possession or control" of the asset. However, they offer no legal authority to support this argument. Accordingly, we do not consider it. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Mikolajczyk v. Ford Motor Co.*, 374 Ill. App. 3d 646, 677 (2007). The plaintiff established that the debtor retained control of the asset after the transfer.

¶ 58 *The transfer was concealed*. The question posed by this factor is whether the debtor disclosed or concealed the transfer. The defendants admit that they did not disclose the transfer either before or when it occurred. However, they argue that they were under no obligation to disclose the transfer, and that their failure to do so is not enough to show that they "actively concealed" the transfer. This argument lacks merit because the Act does not require "active concealment" of the transfer, and the defendants have not cited any legal authority that it does. Rather, under the Act, "concealed" is simply used as the converse of "disclosed." 740 ILCS 160/5(b) (West 2008) ("consideration may be given *** to whether: * * * (3) the transfer *** was disclosed or concealed"). As the defendants concede that they did not disclose the transfer, there is no factual dispute that this factor is present.

¶ 59 *The debtor removed or concealed assets.* The plaintiff asserts that this factor is present because, although the silver was listed as on the financial statement as an asset of Rego Group, the plaintiff did not know, until April 15, 2013, the location of the silver. During that time, the silver was physically removed from the HSBC vaults and placed in the vaults of JP Morgan Chase. We find that the asset was removed and its location concealed after the transfer.

¶ 60 *The transfer occurred shortly before or shortly after a substantial debt was incurred.* The defendants do not contest that the transfer of the silver occurred approximately six months after Rego Group received a loan of over $1.4 million from the plaintiff, nor do they contest that the loan qualified as "substantial" under the Act. They merely argue that the passage of six months is not "shortly after." However, courts applying the Act have held that the phrase "shortly before or shortly after" may encompass periods of time as long as nine months. See, *e.g.*, *Wachovia Securities, LLC v. Banco Panamericano, Inc.*, 674 F.3d 743, 757-58 (7th Cir. 2012) (transfer that occurred seven months after debtor incurred substantial debt was made "shortly after" the debt); *In re Eckert*, 388 B.R. 813, 834 (N.D. Ill. 2008), *aff'd, Grochinski v. Schlossberg*, 402 B.R. 825 (N.D. Ill. 2009) (voiding a transfer made nine months before the debtor filed bankruptcy); see also *In re Phillips*, 379 B.R. 765, 782 (N.D. Ill. 2007) ("shortly after" time frame shown where transfer was made "less than a year" after creditor obtained judgment against the debtor). Accordingly, the presence of this factor is established.

¶ 61 Lastly, we note the presence of one other badge of fraud: the record reflects that Rego Group did not receive consideration for the transfer that was "reasonably equivalent to the value of the asset transferred." 740 ILCS 160/5(b)(8) (West 2008). The plaintiff did not raise this factor in its motion for summary judgment, or argue its existence on appeal. However, "a reviewing court can uphold the decision of the circuit court on any grounds which are called for by the record." *Ultsch v. Illinois Municipal Retirement Fund*, 226 Ill. 2d 169, 192 (2007). Here,

it is undisputed that no consideration was given for the transfer of more than $1 million worth of silver: rather, Efstathios described it simply as a "distribution." The record thus establishes that this factor is present as well as the five factors relied upon by the trial court.

¶ 62 In summary, the plaintiff established that five of the badges of fraud are present, and we note the presence of one more: the transfer of the silver was made to insiders; after the transfer, "the debtor retained possession or control of the asset"; the transfer was not disclosed; the asset was removed or concealed; the transfer occurred shortly after a substantial debt was incurred; and there was no consideration for the transfer.

¶ 63 The defendants argue that, considered together, these factors do not show, as a matter of law, that the transfer was motivated by an actual intent to hinder or delay creditors. They point out that they have presented at least some evidence that twoone of the section 5(b) factors favors them—according to the financial statements, the transfer didtrial court found that the plaintiff had not involve "substantially all" of Rego Group's assets, and established that Rego Group was not insolvent at the time of the transfer. 740 ILCS 160/5(b)(5), (9) (West 2008). Thus Accordingly, they argue that they have raised a factual question as to these two factors, and summary judgment was not properly granted.

¶ 64 There is authority that the presence of between four and six badges of fraud can give rise to a presumption that the transfer was a fraudulent conveyance under the Act. See *Sharif*, 2014 IL App (1st) 133008, ¶ 23 (collecting cases affirming lower courts' findings that transfers were fraudulent based on the presence of between four and six badges of fraud); see also *Kennedy*, 279 Ill. App. 3d at 369-70 (finding actual intent and granting summary judgment in favor of plaintiff where five factors were present). There is even authority to the effect that just one factor, if sufficiently serious, may be enough to support a finding of fraudulent conveyance.

Brandon, 419 F.3d at 600. Accordingly, we reject the defendants' argument that, as a matter of law, the badges of fraud shown here cannot support summary judgment for the plaintiff.

¶ 65 As to the defendants' argument that there is a question of fact as to whether they were actually insolvent, in *Birney*, 348 Ill. at 414, the supreme court noted that the presence or absence of this factor is not dispositive. In that case, the debtor's business had been declining for over two years before the transfer at issue, but he was not wholly insolvent at the time of the transfer. The supreme court said: "The true test in determining the validity of a voluntary conveyance as against creditors *** is whether or not it directly tended to or did impair the rights of creditors. It is of no moment that the property remaining in the grantor's hands after the conveyance was in nominal value more than equal to the amount of his indebtedness if subsequent events show that the property retained was not sufficient to discharge all his liabilities." *Id*. This language suggests that the factor of insolvency is of relatively little moment when the financial picture was clearly worsening at the time of the transfer and the debtor later could not pay his debts. Similar circumstances were present here, where the national real estate crash occurred in the latter half of 2008, between the date of the loan and the date on which Rego Group transferred the silver to insiders. Under these circumstances, the solvency of Rego Group on the date of the transfer was "of no moment." Based upon the badges of fraud shown here, a presumption of actual intent arose and the entry of summary judgment was proper.

¶ 66 The admissions made by the defendants also foreclose the affirmative defenses raised here. Those defenses included, *inter alia*, the affirmative defense that the plaintiff's suit was brought beyond the statute of limitations. Section 10(a) of the Act provides that claims under section 5(a)(1) must be brought "within 4 years after the transfer was made *** or, if later, within one year after the transfer *** was or could reasonably have been discovered by the claimant[.]" 740 ILCS 160/10(a) (West 2008). The plaintiff concedes that it did not file suit

within four years after the transfer, but it contends that it did bring suit within one year of discovering the transfer.

¶ 67 The defendants submitted an affidavit by Efstathios stating that he informed the plaintiff about the transfer of the silver no later than the end of 2010. However, this evidence cannot be considered, because it is contrary to one of the judicial admissions made by the defendants through their failure to respond to the requests to admit. *Zwicky*, 373 Ill. App. 3d at 140. The defendants admitted (through request no. 2) that they "failed to inform the Bank of the actual transfer of the silver bars after it occurred until April 15, 2013." The plaintiff brought suit in May 2013. On this evidence, the defendants cannot show a genuine factual dispute regarding whether the suit was timely filed. The defendants have not pointed to any other affirmative defense that they contend should prevent the entry of summary judgment.

¶ 68 For all of these reasons, we affirm the trial court's grant of summary judgment in favor of the plaintiff.

¶ 69 B. Rule 183 Motion for an Extension of Time

¶ 70 On appeal, the defendants next argue that the trial court erred in failing to rule on their motion to extend, pursuant to Supreme Court Rule 183, their time for responding to the requests to admit. However, it is the responsibility of the party filing a motion to bring it to the trial court's attention and have it resolved. *Jackson v. Alverez*, 358 Ill. App. 3d 555, 563 (2005). Here, the record shows that the defendants filed their Rule 183 motion on March 18, 2014, noticing it for presentation to the trial court on March 20, 2014. However, on that date, although the parties discussed the filing of the motion with the trial court, the motion was not argued, and no briefing schedule or hearing date was set. Rather, the record reflects that there was some conversation suggesting that the defendants might wish to consider the most appropriate manner of proceeding on the motion once they had had the opportunity to review the trial court's

memorandum opinion regarding summary judgment, which would be issued later that day. The record on appeal does not contain any court orders or transcripts discussing the Rule 183 motion further. Nor did the defendants attempt to argue the merits of that motion in the course of the proceedings on their motion to reconsider. Where no ruling has been made on a motion, the presumption is that the motion was waived or abandoned. *Id*. (collecting cases). Accordingly, the defendants may not challenge, on appeal, the trial court's failure to issue a ruling on this motion.

¶ 71 C. Motion to Reconsider

¶ 72 We next consider whether the trial court erred in denying the defendants' motion to reconsider. "The purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence that was not available at the time of the hearing, changes in the law[,] or errors in the court's previous application of existing law." *Mular v. Ingram*, 2015 IL App (1st) 142439, ¶ 31. A trial court's decision to grant or deny a motion to reconsider is within its discretion and will not be disturbed absent an abuse of discretion. *Simmons*, 406 Ill. App. 3d at 324.

¶ 73 The defendants raised several arguments in their motion for reconsideration. First, they argued once again that the silver was not an asset reachable under the Act, and that their failure to respond to the requests to admit did not give rise to admissions because the requests were improperly served and were improper in form. As this was simply reargument, it did not provide a basis for reconsideration. *Mular*, 2015 IL App (1st) 142439, ¶ 31. They also provided additional legal authority for their previous argument that their failure to respond to the requests to admit did not give rise to admissions because the requests were improperly served and were improper in form. As we have noted above, however, although such objections could provide a

basis for written objections or for granting the defendants more time to respond, they did not release the defendants from their obligations under Rule 216.

¶ 74 Next, the defendants argued that the plaintiff forfeited its ability to rely on the admissions relating to the badges of fraud by introducing other evidence to support its motion for summary judgment (*i.e.*, the affidavits of Efstathios and Duellman). Although admissions under Rule 216 may not be controverted by the admitting party, the *requesting* party may forfeit the right to rely on an admission if it introduces additional evidence on the same issue that would be proven by the admission. *Rowe v. State Bank of Lombard*, 247 Ill. App. 3d 686, 696 (1993). Where a party presents evidence to prove the same fact that was admitted pursuant to Rule 216, it forfeits the Rule 216 admission and must rely instead on the strength of the evidence presented. *In re Marriage of Tabassum & Younis*, 377 Ill. App. 3d 761, 774 (2007); *Hubeny v. Chairse*, 305 Ill. App. 3d 1038, 1044 (1999).

¶ 75 As noted above, the admissions arising from the requests to admit were potentially subject to two types of forfeiture. As to the "ultimate" admission regarding actual intent, the plaintiff forfeited the right to rely on it by citing that admission for the first time in the reply brief and failing to cite that admission in the motion for summary judgment, instead relying solely on the admissions related to the section 5(b) badges of fraud in order to show actual intent. *Bermudez*, 2014 IL App (1st) 122824, ¶ 72.

¶ 76 As to the latter admissions that *were* cited in the motion for summary judgment, however, the defendants themselves forfeited this argument by failing to raise it in their response to the plaintiff's motion for summary judgment. Nothing prevented the defendants from doing so; indeed, the plaintiff's motion for summary judgment was based solely upon these admissions regarding the badges of fraud. Because this argument could have been raised earlier but was not, the trial court did not err in declining to consider it as a basis for reconsideration. *Simmons*,

406 Ill. App. 3d at 322; *Rayner*, 226 Ill. App. 3d at 510. See also *Evanston Ins. Co. v. Riseborough*, 2014 IL 114271, ¶ 36 ("Arguments raised for the first time in a motion for reconsideration in the circuit court are forfeited on appeal.").

¶ 77 D. Terms of the Judgment Order

¶ 78 The defendants' final contention on appeal it that several aspects of the May 7, 2014, judgment order are improper. The defendants failed to raise all but one of these complaints before the trial court, and thus we could find them forfeited. *Hytel Group, Inc. v. Butler*, 405 Ill. App. 3d 113, 127 (2010). However, in the interests of ensuring a sound result (*Sharif*, 2014 IL App (1st) 133008, ¶ 21), we briefly consider the substance of their complaints.

¶ 79 There is no merit to the defendants' arguments regarding the judgment order. For instance, they complain that the amount of the deficiency judgment entered in the underlying foreclosure and guaranty actions against Rego Group and Efstathios (which served as the basis for the judgment here) "does not appear in the record." However, the trial court stated this amount in its March 20, 2014, order granting summary judgment, and the defendants have never contended that this amount is incorrect. To the contrary, their own brief on appeal gives this same amount as the deficiency judgment, citing the trial court's order. The defendants then request a prove-up on remand in order to argue that the deficiency amount should be adjusted because the plaintiff itself bought the mortgaged property in the foreclosure sale and so its bid "does not necessarily reflect actual value" of the property. However, the time to argue about whether the bid reflected the fair market value of the property was during the foreclosure action. See 735 ILCS 5/15-1508 (West 2010). The defendants cannot collaterally attack the deficiency judgment on these grounds in this appeal.

¶ 80 As to paragraph 7 of the judgment order, the defendants complain that it improperly imposes "joint and several liability," but this is simply a misstatement: paragraph 7 imposes

individual liability in amounts representing the *pro rata* shares of silver received by each defendant. The defendants further argue that, under section 160/9(b) of the Act (740 ILCS 160/9(b) (West 2008)), the amount of the judgment imposed against each defendant must be limited to the value of the asset transferred, and complain that the plaintiff has not provided any calculation of that value on the date of the transfer. However, the record does not reflect any likelihood that the judgment amounts imposed exceed the value of the silver. To the contrary, the total value of the silver transferred exceeded $1 million, while the total amount of the judgment imposed on all defendants is less than $600,000. The defendants also argue that the judgment order improperly makes the individual defendants (not merely their self-settled trusts) liable. However, the individual defendants have *never* contested their potential liability under the Act at any prior point in this action, despite the fact that the complaint clearly seeks to impose such liability, and we will not entertain this argument for the first time on appeal. *Hytel Group*, 405 Ill. App. 3d at 127 ("A reviewing court will not consider arguments not presented to the trial court.").

¶ 81 As to paragraph 8, the defendants assert that its terms improperly "circumvent the attachment procedure set forth in the Code of Civil Procedure and would sidestep other procedural rules and safeguards imposed by the Code" in contravention of section 160/8 of the Act (740 ILCS 160/8 (West 2008)), but they provide no specifics whatsoever as to which provisions of the judgment order conflict with the Code of Civil Procedure or the nature of any such conflict, nor do they identify any provisions of the Code that should govern instead. "A reviewing court is entitled to have the issues before it clearly defined and is not simply a repository in which appellants may dump the burden of argument and research; an appellant's failure to properly present his own arguments can amount to waiver of those claims on appeal." *People v. Chatman*, 357 Ill. App. 3d 695, 703 (2005).

¶ 82 The defendants argue that, under the Act, the transferred asset should be restored to the debtor so that the creditor may levy upon it, but the Act does not say this: it simply permits the creditor to "levy execution on the asset transferred or its proceeds." 740 ILCS 160/8 (West 2008). The defendants also complain that the judgment order "automatically put the asset in to [*sic*] the creditor's hands," but this is simply incorrect: the order directs the silver to be turned over to a third party, Dalzell & Co., for accounting and liquidation.

¶ 83 The defendants' final complaint is that although the judgment order requires the turnover of the silver to Dalzell & Co., that entity has not been appointed as a receiver. We agree that the formalities of appointing a receiver or a third party of like capacity should be observed, and direct the trial court to ensure that this occurs in the course of further proceedings. However, this oversight does not invalidate the judgment order. We thus reject the defendants' arguments with respect to the terms of the judgment order.

¶ 84 CONCLUSION

¶ 85 For the foregoing reasons, the judgment of the circuit court of McHenry County is affirmed.

¶ 86 Affirmed.