2017 IL App (1st) 162480-U

FIFTH DIVISION
August 18, 2017

No. 1-16-2480

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

SUMMITBRIDGE CREDIT INVESTMENTS II, LLC, Plaintiff-Appellee, v. DON KEE AHN, YOUN SUK AHN, ALEX AHN, and ELENA AHN, Defendants-Appellants.	))))))))))	Appeal from the Circuit Court of Cook County No. 15 CH 13648 Honorable Franklin Ulysses Valderrama, Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming judgment of circuit court of Cook County granting summary judgment in favor of successor lender in fraudulent transfer action.

¶ 2 Plaintiff SummitBridge Credit Investments II, LLC (Summit), as successor in interest to Foster Bank, filed a complaint in the circuit court of Cook County to set aside a transfer of real property from Don Kee Ahn (Don) and his wife Youn Suk Ahn (Youn) to their children Alex Ahn (Alex) and Elena Ahn (Elena), pursuant to the Uniform Fraudulent Transfer Act (the Act)

(740 ILCS 160/1 *et seq.* (West 2014)). On appeal, the Ahns[1] contend that the circuit court erred in granting summary judgment in favor of Summit. As stated below, we affirm the judgment.

¶ 3 BACKGROUND

¶ 4 The complaint alleged, in part, as follows. Don and Youn owned two parcels of commercial real estate located in Chicago at 5659 North Central Avenue (the Central Avenue Property),[2] and 1724-32 West Lawrence Avenue (the Lawrence Avenue Property), and a third located in Skokie at 5237 West Golf Road (the Golf Road Property). Summit was the successor mortgagee with respect to the Golf Road Property and the Lawrence Avenue Property.

¶ 5 After Don and Youn defaulted, Summit filed two separate foreclosure actions in October 2012, relating to the Lawrence Avenue Property and the Golf Road Property. On April 25, 2014, the circuit court confirmed the sale of the property in the Golf Road Property foreclosure case and entered an *in personam* judgment against Don and Youn in the amount of $219,298.69, plus interest. On April 28, 2014, the circuit court entered a judgment against Don and Youn in the amount of $360,426.30, plus interest, in the Lawrence Avenue Property foreclosure case. Summit recorded a memorandum of judgment with respect to each judgment on May 1, 2014.

¶ 6 Prior to the recording of the memoranda of judgments, Don and Youn executed a quitclaim deed conveying the Central Avenue Property to Alex and Elena on April 30, 2014. The deed was recorded on May 13, 2014.

¶ 7 In November 2014, Summit served citations to discover assets on Don and Youn. The

[1] Don, Youn, Alex, and Elena (the Ahns) were named as the defendants in the circuit court action and are the appellants herein. We note that Don and Youn are also referred to in the record as "Dong Kee Ahn" and "Younsuk Ahn," respectively. Although the complaint alleged that Elena is Alex's wife, the record indicates – and the appellee brief acknowledges – that Elena is the *daughter* of Don and Youn.

[2] The order granting summary judgment indicates that a second address referenced in the record – 5690 North Elston Avenue – is, in fact, the Central Avenue Property. The Central Avenue Property is located at or near the intersection of Central Avenue and Elston Avenue.

citations sought, among other things, "[c]opies of all deeds, mortgages, trust deeds, certificates of participation, trust agreements and contracts for deed, evidencing any ownership, interest, legal or equitable, in real estate in which the Judgment Debtor now has or had any interest during the past five years." The citations also sought production of copies of all documents "which relate to or refer to the description, location and/or title to any and all parcels of real property in which the Judgment Debtor have any interest, or had an interest in the last five years[.]" The couple tendered various documents in February 2015 in response to the citations, *i.e.*, an income and asset form, title information for their vehicles, a 2012 federal tax return, mortgage statements for their personal residence, and bank statements. Summit, however, did not receive any documentation regarding the transfer of the Central Avenue Property. In March 2015, Don and Youn submitted a personal financial statement to Summit which listed their negative net worth as "-$509,350."

¶ 8 Summit subsequently became aware of the quitclaim deed for the Central Avenue Property. On July 2, 2015, Summit served a production request on Don and Youn regarding the transfer. Six weeks later, their counsel responded that the property had been quitclaimed on May 13, 2014, and "[t]here are no closing documents involved."

¶ 9 In its complaint, Summit alleged that the transfer of the Central Avenue Property was fraudulent under sections 5(a)(1) and 6(a) of the Act. Summit sought an order voiding the transfer and restoring title in Don and Youn. The Ahns denied various allegations raised by Summit in its complaint, including the allegation that there was no compensation for the transfer of the property.

¶ 10 In March 2016, Summit filed a motion for summary judgment, asserting that the Ahns' general denials failed to raise a genuine issue of material fact or defense to the complaint.

Summit argued, in part, that the transfer was made with actual intent to hinder, delay or defraud creditors; it was made to an insider; the judgments in the foreclosure actions were entered before the transfer; the Central Avenue Property was the sole substantial unencumbered property of Don and Youn, and the transfer left them unable to pay their debt to Summit; there was no consideration for the transfer; and Don and Youn were insolvent, as defined by the Act. The affidavit of Eric Engel (Engel), the asset manager and custodian of records for Summit, was provided in support of the motion.

¶ 11 Don submitted an affidavit in support of the Ahns' opposition to the summary judgment motion. According to Don, after he and Youn signed refinancing documents with respect to the Golf Road Property and the Lawrence Avenue Property in 2010 and 2011, the couple decided to retire and have their children take over their business.[3] In 2011, he requested that his long-time attorney prepare documents "to convey our business at" the Central Avenue Property to Alex and Elena. The attorney indicated that he would prepare a quitclaim deed, and Don believed that the transfer had occurred. Don subsequently discovered that his attorney "hardly did anything" during his representation of him and Youn in the foreclosure actions. After consulting with another attorney on April 24, 2014,[4] he then learned for the first time that the Central Avenue Property had not been conveyed to his children. Don requested that his new counsel immediately effectuate the transfer. Don averred that neither he nor his family members "intended to or did in fact transfer anything fraudulently to anyone." In its reply, Summit argued that fraud was established under sections 5(a)(1) and 5(a)(2) of the Act.

¶ 12 In a memorandum opinion and order entered on August 15, 2016, the circuit court provided that Summit had established a sufficient basis to infer a presumption of "fraud in fact"

[3] The record does not appear to indicate the nature of the business.
[4] The Ahns filed a legal malpractice action against the original attorney in 2016.

under section 5(a)(1) of the Act and that Summit had established "fraud in law" under sections 5(a)(2) and 6(a) of the Act. The circuit court thus found that the transfer of the Central Avenue Property was void and granted summary judgment in favor of Summit. The Ahns filed this timely appeal.

¶ 13 ANALYSIS

¶ 14 The Ahns contend that the circuit court erred in granting summary judgment in favor of Summit. Summary judgment is proper where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2014). We review the grant of summary judgment *de novo*. *E.g., Harris, N.A. v. Harris*, 2012 IL App (1st) 113813, ¶ 13.

¶ 15 Summit filed its complaint pursuant to the Uniform Fraudulent Transfer Act. The Act allows a creditor to defeat a debtor's transfer of assets to which the creditor was entitled. *Villaverde v. IP Acquisition VIII, LLC*, 2015 IL App (1st) 143187, ¶ 37; *A.G. Cullen Construction, Inc. v. Burnham Partners, LLC*, 2015 IL App (1st) 122538, ¶ 26. See also *Bank of America v. WS Management, Inc.*, 2015 IL App (1st) 132551, ¶ 85 (noting that the purpose of the Act is to invalidate otherwise sanctioned transactions which are made with a fraudulent intent).

¶ 16 In the instant case, Summit has challenged the transfer of the Central Avenue Property pursuant to both sections 5 and 6 of the Act. Section 5(a) of the Act provides as follows:

> "§ 5. (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with the actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(B) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due." 740 ILCS 160/5(a) (West 2014).

Section 6(a) of the Act provides, in part, that a transfer made by a debtor "is fraudulent as to a creditor whose claim arose before the transfer was made *** if the debtor made the transfer *** without receiving a reasonably equivalent value in exchange for the transfer *** and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer[.]" 740 ILCS 160/6(a) (West 2014).

¶ 17 Two causes of actions for fraud are thus permitted under the Act: "fraud in fact" and "fraud in law." *Bank of America*, 2015 IL App (1st) 132551, ¶ 87. To establish fraud in fact pursuant to section 5(a)(1) of the Act, a creditor must prove by clear and convincing evidence that the transfer was made with actual intent to hinder, delay, or defraud creditors. 740 ILCS 160/5(a)(1) (West 2014); *Hofmann v. Hofmann*, 94 Ill. 2d 205, 222 (1983) (stating that fraud will not be presumed in Illinois and must be proved by clear and convincing evidence). See also *Wachovia Securities, LLC v. Banco Panamericano, Inc.*, 674 F.3d 743, 757 (7th Cir. 2012).

¶ 18 Sections 5(a)(2) and 6(a) of the Act address fraud in law. *Cordes & Co. v. Mitchell*

Companies, LLC, 605 F. Supp. 2d 1015, 1021 (N.D. Ill. 2009). Fraud in law or constructive fraud under section 5(a)(2) does not require proof of actual intent to defraud. 740 ILCS 160/5(a)(2) (West 2014); *A.G. Cullen Construction*, 2015 IL App (1st) 122538, ¶ 27. Transfers made for less than reasonably equivalent value, leaving a debtor unable to meet his or her obligations, are deemed or presumed to be fraudulent. *Id.*, ¶ 27. See also *Apollo Real Estate Investment Fund, IV, L.P. v. Gelber*, 403 Ill. App. 3d 179, 193 (2010). Although similar to section 5(a)(2), section 6(a) of the Act only pertains to claims arising before the allegedly fraudulent transfer and requires that, at the time of the transfer, the transferor was insolvent or made insolvent as a result thereof. 740 ILCS 160/6(a) (West 2014); *Cordes*, 605 F. Supp. 2d at 1021. The plaintiff has the burden of proving fraud in law by a preponderance of the evidence. See, *e.g.*, *In re Ziegler*, 320 B.R. 362, 374 (Bankr. N.D. Ill. 2005). Once the elements of fraud in law have been proved, the presumption of fraud becomes conclusive unless rebutted. *Regan v. Ivanelli*, 246 Ill. App. 3d 798, 804 (1993).

¶ 19 As the Ahns challenge the circuit court's conclusions regarding both fraud in fact and fraud in law, we address each theory below.

¶ 20 Fraud in Fact

¶ 21 A creditor can prove fraud in fact, or actual fraud, based on the existence of certain factors or "badges of fraud." *Bank of America*, 2015 IL App (1st) 132551, ¶ 88. See also *In re Grube*, 462 B.R. 663, 664 (Bankr. C.D. Ill. 2012) (noting that "[b]ecause transferors rarely admit to a wrongful intent, courts use recognized badges of fraud to regularize the inquiry into whether the circumstances surrounding the transfer are such that the requisite intent may be inferred"). The Act lists eleven factors which may be considered in determining fraudulent intent. *Northwestern Memorial Hospital v. Sharif*, 2014 IL App (1st) 133008, ¶ 22. Section 5(b) of the

Act provides that, in determining actual intent under section 5(a)(1) of the Act, consideration may be given, among other factors, to whether: (1) the transfer was to an insider; (2) the debtor retained possession or control of the property transferred after the transfer; (3) the transfer was disclosed or concealed; (4) before the transfer was made, the debtor had been sued or threatened with suit; (5) the transfer was of substantially all of the debtor's assets; (6) the debtor absconded; (7) the debtor removed or concealed assets; (8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred; (9) the debtor was insolvent or became insolvent shortly after the transfer was made; (10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and (11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor. 740 ILCS 160/5(b) (West 2014).

¶ 22 The foregoing factors are "merely considerations," and a court need not consider all eleven factors. *Bank of America*, 2015 IL App (1st) 132551, ¶ 89. When the factors are present in sufficient number, it may give rise to a presumption or inference of fraud. *Id.*; *Northwestern Memorial Hospital*, 2014 IL App (1st) 133008, ¶ 23. At the same time, the presence of a single factor could entitle a party to relief. *Bank of America*, 2015 IL App (1st) 132551, ¶ 89. The "debtor and donee of the transfer have the burden of dispelling an implication of fraud." *Id.*

¶ 23 The first factor is whether the transfer was to an insider. Under the Act, an "insider" of an individual debtor includes relatives of the debtor. 740 ILCS 160/2(g)(1)(A) (West 2014). Alex and Elena are relatives of Don and Youn. See 740 ILCS 160/2(k) (West 2014) (defining "relative"). While a transfer between family members is not *per se* proof of fraudulent intent, a familial relationship is "weighty proof of such intent." *In re Mussa*, 215 B.R. 158, 168 (Bankr. N.D. Ill. 1997). Although the Ahns suggest that the circuit court's "cursory analysis" of this

factor was erroneous, the record is clear that the transferees of the Central Avenue Property were insiders of the debtors.

¶ 24 The second factor under section 5(b) is whether the debtor retained possession or control of the property after the transfer. 740 ILCS 160/5(b)(2) (West 2014). Summit contends that Don's and Youn's possession and control of the Central Avenue Property after the alleged conveyance to Alex and Elena in 2011 "is *prima facie* evidence of fraud." As the property was not actually transferred until 2014, however, we reject this contention. Summit has not met its burden with respect to the second factor.

¶ 25 With respect to the third factor – whether the transfer was disclosed or concealed – the circuit court observed that Don and Youn did not disclose the transfer of the Central Avenue Property in response to the citations to discover assets. The Ahns initially argue that the November 2014 citations did not request information regarding any transfer. As noted above, the citations sought, among other things, "[c]opies of all deeds *** evidencing any ownership, interest, legal or equitable, in real estate in which the Judgment Debtor now has or had any interest during the past five years." Because the transfer occurred in 2014, Don and Youn owned the Central Avenue Property within five years of the citations.

¶ 26 According to the Ahns, Don explained in his affidavit that the transfer should have occurred in 2011. The record does not include any evidence, however, to substantiate his contention, *e.g.*, correspondence with his prior attorney. Even if the Central Avenue Property was transferred in 2011, Don and Youn would nevertheless have been required to disclose such ownership in response to the citations, given the five-year window referenced therein. We also reject the Ahns' argument that the "disclosure/concealment" factor and certain other section 5(b) factors were not raised by Summit until its reply to their response to its motion for summary

judgment. Among other things, the cases cited by the Ahns are inapposite as they address attempts to raise an argument for the first time in a reply brief *on appeal*, in violation of Illinois Supreme Court Rule 341(h)(7) (Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2017)). *E.g.*, *Salerno v. Innovative Surveillance Technology, Inc.*, 402 Ill. App. 3d 490, 502 (2010). In sum, the record supports the conclusion that Don and Youn concealed the transfer.

¶ 27 Under the fourth factor, we consider whether "before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit." 740 ILCS 160/5(b)(4) (West 2014). Because the transfer of the Central Avenue Property "took place in 2011 in the minds of Don and Youn," the Ahns contend that "there was a genuine issue of material fact as to whether the debtors were embroiled in an active litigation at the time of the transfer." The reality, however, was that the transfer occurred in 2014, only days after foreclosure proceedings resulted in sizeable personal judgments against Don and Youn. The fourth factor plainly has been met.

¶ 28 The fifth factor is whether the transfer was of substantially all of the debtor's assets. The personal financial statement provided by Don and Youn in early 2015 indicated that there were no other significant unencumbered assets. At that time, their liabilities exceeded their assets by more than a half million dollars. While the Ahns suggest that the couple did not have financial problems until 2011 or 2012, the record supports Summit's contention that the conveyance of the Central Avenue Property in 2014 constituted a transfer of substantially all of their assets.

¶ 29 The sixth factor has not been met, as neither Don nor Youn absconded. See 740 ILCS 160/5(b)(6) (West 2014). The seventh factor – whether the debtor removed or concealed assets – has been met for the same reasons stated with respect to the third factor above. See 740 ILCS 160/5(b)(7) (West 2014). The failure of Don and Youn to disclose their prior ownership of the Central Avenue Property in response to the citations to discover assets supports the conclusion

that they concealed such asset.

¶ 30 With respect to the eighth factor, we consider whether "the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred." 740 ILCS 160/5(b)(8). "There is no 'reasonably equivalent value' when the consideration for a transfer is either inadequate or nonexistent." *In re Commercial Loan Corp.*, 396 B.R. 730, 746 (Bankr. N.D. Ill. 2008). See also *Grochocinski v. Schlossberg*, 402 B.R. 825, 836 (N.D. Ill. 2009) (noting that courts have utilized several factors when evaluating reasonably equivalent value, including "(1) whether the value of what was transferred is equal to the value of what was received; (2) the fair market value of what was transferred and what was received; (3) whether the transaction took place at arm's length; and (4) the good faith of the transferee").

¶ 31 In their response to the motion for summary judgment, the Ahns argued that Don's affidavit "suggests" that Alex and Elena "have been in the process of taking over the family business and presumably invested their time, money and efforts of their own in the business." Don's affidavit, however, does not specifically reference any monetary or nonmonetary consideration provided by his children. Furthermore, even assuming that Don's representation that the "business was handed down" in 2011 implicitly means that the children provided time, money, and/or efforts, there is no indication that such consideration related to the *real property* at issue herein, as opposed to the *business* which was operated at that location. In any event, "reasonably equivalent value" is measured at the time of the transfer. *Wachovia Securities, LLC v. Neuhauser*, 528 F. Supp. 2d 834, 860 (N.D. Ill. 2007). See also *Nelmark v. Helms*, 2003 WL 1089363, at *2 (N.D. Ill. Mar. 11, 2003). Based on our review of the record, "reasonably equivalent value" was not provided for the Central Avenue Property in 2014.

¶ 32 In evaluating the ninth factor, we consider whether the debtor was insolvent or became

insolvent shortly after the transfer was made. "An entity is insolvent if the sum of its debts is greater than the fair valuation of all of its assets, and an entity is presumed to be insolvent if it is unable to pay its debts as they fall due or in the ordinary course of business." *Tower Investors, LLC v. 111 East Chestnut Consultants, Inc.*, 371 Ill. App. 3d 1019, 1029 (2007); 740 ILCS 160/3 (West 2014). The Ahns contend that Don's "uncontradicted affidavit" established that he and Youn "did not have any financial problems until around 2011 or 2012, after their children had taken over the business on Central Avenue." The Ahns thus posit that there was a genuine issue of material fact as to whether Don and Youn were insolvent.

¶ 33 Their argument overlooks the fundamental fact that the Central Avenue Property was not transferred until 2014. Regardless of their financial status in 2011 and 2012, the record supports the conclusion that they were insolvent at the time of or shortly after the transfer. For example, the commencement of two foreclosure actions in 2012 and the entry of sizeable *in personam* judgments in the foreclosure cases in 2014 strongly suggest that the couple was unable to pay debts as they came due. Furthermore, the personal financial statement they submitted after the transfer of the Central Avenue Property reflected that their debts greatly exceeded the fair valuation of their assets. For the foregoing reasons, the ninth factor has been met.

¶ 34 The tenth factor – whether "the transfer occurred shortly before or shortly after a substantial debt was incurred" (740 ILCS 160/5(b)(10) (West 2014)) – also has been met. Personal judgments were entered against Don and Youn in the two foreclosure actions on April 25, 2014, and April 28, 2014. On April 30, 2014, the couple executed a quitclaim deed transferring the Central Avenue Property to their children.

¶ 35 The eleventh factor is whether "the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor." 740 ILCS 160/5(b)(11)

(West 2014). As there is no indication that Don and Youn transferred the Central Avenue Property to a lienor, this factor has not been met.

¶ 36 As discussed above, many of the badges of fraud listed in section 5(b) of the Act are present in the instant case and are sufficient to raise a presumption of fraudulent intent. *E.g.*, *Bank of America*, 2015 IL App (1st) 132551, ¶ 89 (noting that when the badges are present in sufficient number, it may give rise to the presumption or inference of fraud); *In re Phillips*, 379 B.R. 765, 778 (Bankr. N.D. Ill. 2007) (observing that the presence of seven badges of fraud has been held to be sufficient to raise a presumption of fraudulent intent). The Ahns contend, however, that such factors "do not inexorably yield the conclusion that summary judgment was proper in this case." Citing *In re Grube*, 462 B.R. 663 (Bankr. C.D. Ill. 2012), they argue that Don's "uncontroverted attestation" as to the "actual intent behind the transfer of the [Central Avenue Property] initially sought in 2011 and then actually transferred in 2014 precludes summary judgment in this case."

¶ 37 The bankruptcy court in *Grube* observed that "[w]hen a party charged with a fraudulent intent denies it, resolution of the issue by summary judgment is difficult, if not impossible." *Id.* at 664. Although we recognize that summary judgment generally may not be available where the debtor claims a lack of fraudulent intent, we nevertheless conclude that summary judgment was proper in the instant case.

¶ 38 As an initial matter, the affidavit submitted by Don is deficient in a number of respects. Illinois Supreme Court Rule 191(a) provides, in part, that an affidavit in opposition to a motion for summary judgment "shall be made on the personal knowledge of the affiants; shall set forth with particularity the facts upon which the claim, counterclaim, or defense is based; shall have attached thereto sworn or certified copies of all documents upon which the affiant relies; shall

not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto." Ill. S. Ct. R. 191(a) (eff. Jan. 4, 2013). Because an affidavit must be made on the affiant's personal knowledge, we question whether Don can attest to the intent of another person, *e.g.*, Youn. Rule 191(a) expressly provides that "[i]f all of the facts to be shown are not within the personal knowledge of one person, two or more affidavits shall be used." *Id*. While Don averred that "[n]either my wife nor anyone in my family intended to or did in fact transfer anything fraudulently to anyone," no affidavits were submitted by Youn, Alex, or Elena in opposition to the motion for summary judgment.

¶ 39 Don's affidavit also fails to "set forth with particularity the facts" upon which his defense is based. *Id.* For example, Don averred that he requested that his former attorney prepare documents "in 2011" to "convey our business at 5659 North Central Avenue, Chicago, Illinois, to our children." Other than his generic reference to "2011," he provides minimal detail regarding his communication with his former attorney. In addition, as noted above, Don did not aver that he requested that his attorney effectuate the transfer of the Central Avenue Property, as opposed to the "business." As "[a]n affidavit submitted in summary judgment serves as a substitute for testimony at trial" (*Robidoux v. Oliphant*, 201 Ill. 2d 324, 335 (2002)), the lack of specificity in and support for Don's affidavit is problematic.

¶ 40 We further observe that section 5(a)(1) refers to an "actual intent to hinder, delay, or defraud." 740 ILCS 160/5(a)(1) (West 2014). Although Don stated that neither he nor his family intended to "transfer anything fraudulently," he did not deny any intent to "hinder" or "delay" Summit. *E.g.*, *Nelmark*, 2003 WL 1089363, at *2 (noting that the trustee was not required to prove intent to defraud if she proved intent to hinder or delay).

¶ 41 Despite denying summary judgment to the creditor, the *Grube* court noted that "where the party's denial of the requisite state of mind is 'so utterly implausible in light of conceded or irrefutable evidence that no rational person could believe it,' summary judgment may be appropriate." *Grube*, 462 B.R. at 664, citing *In re Chavin*, 150 F.3d 726, 728 (7th Cir. 1998). Such is the case herein. Even if their original intent in 2011 was to transfer the Central Avenue Property as they passed down their business due to their retirement, Don and Youn were aware of the foreclosure proceedings as of the time of the actual transfer in 2014. A few days after significant judgments were entered against them personally, they transferred real estate to their children. In response to Summit's citations to discover assets, the couple apparently adopted a flawed, if not disingenuous, interpretation of the citation to avoid revealing their transfer of the Central Avenue Property. Where a debtor's transfers "are motivated even in part by a desire to hinder, delay, or defraud creditors," actual intent is shown. *Nelmark*, 2003 WL 1089363, at *2. In addition, unlike in *Grube*, the Ahns have failed to offer a "non-actionable, corroborated explanation" for the transfer. *Grube*, 462 B.R. at 666 (noting that a cover letter from the debtor's attorney's office expressly referenced the estate-planning purpose for the transfer).

¶ 42 In any event, even if fraud in fact is not proven, a finding of fraud in law is sufficient to support summary judgment in favor of Summit. See, *e.g.*, *Bank of America*, 2015 IL App (1st) 132551, ¶ 87 (observing that the "[d]efendants seems to suggest that plaintiff needed to prove both types, which is incorrect"). We thus turn to the issue of fraud in law.

¶ 43 Fraud in Law

¶ 44 The circuit court concluded that Summit established fraud in law under section 5(a)(2) and section 6(a) of the Act. A transfer is fraudulent under Section 5(a)(2) of the Act when the debtor did not receive reasonably equivalent value for the transfer and the debtor (a) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction or (b) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they came due. 740 ILCS 160/5(a)(2) (West 2014). Section 6(a) of the Act provides that a transfer is fraudulent when (a) the creditor's claim arose before the transfer, (b) the debtor did not receive reasonably equivalent value for the transfer, and (c) the debtor was either insolvent at the time of the transfer or became insolvent as a result. 740 ILCS 160/6(a) (West 2014).

¶ 45 For the reasons discussed above, Summit has provided sufficient evidence to support a *prima facie* case under both sections 5(a)(2) and 6(a). Summit's claim arose prior to the transfer of the Central Avenue Property. The record does not indicate that Don and Youn received reasonably equivalent value – or perhaps even any value – for the transfer. As Engel averred, the couple was insolvent after transferring the property to their children and could not satisfy the debt to Summit.

¶ 46 As stated above, once the elements of fraud in law have been proven, the presumption of fraud becomes conclusive unless rebutted. *Regan*, 246 Ill. App. 3d at 804. See also *First Security Bank of Glendale Heights v. Bawoll*, 120 Ill. App. 3d 787, 792 (1983) (addressing predecessor to the Act; noting that once the elements to show fraud in law "have been proved, unless unrebutted, the presumption of fraud becomes conclusive"). In the instant case, the

burden shifted to the Ahns to show that Don and Youn retained sufficient property subsequent to the transfer of the Central Avenue Property to cover Summit's claim or that Alex and Elena gave adequate consideration. See *Mussa*, 215 B.R. at 171. Simply put, the Ahns have not met this burden. Don's affidavit does not reference any consideration provided Alex and Elena. Furthermore, neither one of them submitted an affidavit stating what they may have provided in exchange for the transfer. The personal financial statement completed by Don and Youn made clear that they lacked sufficient property subsequent to the transfer to satisfy their obligations to Summit. Don's representations regarding the absence of fraudulent intent do not serve as a defense to a fraud in law claim. *Reisch v. Bowie*, 367 Ill. 126, 133 (1937) (stating "if a voluntary conveyance from a parent to a child results in hindering or delaying creditors, it will be regarded as fraudulent in law, irrespective of the honesty of the grantor's motives").

¶ 47 We thus conclude that summary judgment was appropriate based on a fraud in law theory. See, *e.g.*, *Harris N.A.*, 2012 IL App (1st) 113813, ¶ 24 (affirming grant of summary judgment in favor of judgment creditor on certain fraudulent transfer claims); *In re Estates of Markert*, 385 Ill. App. 3d 232, 233 (2008) (affirming grant of summary judgment in favor of bankruptcy trustee on "fraud in law" claim).

¶ 48 CONCLUSION

¶ 49 As the Illinois Supreme Court has observed, "one must be just before he is generous." *Birney v. Solomon*, 348 Ill. 410, 415 (1932). For the reasons discussed herein, we conclude that the transfer of the Central Avenue Property by Don and Youn to Alex and Elena shortly after judgments were entered against them impaired the rights of Summit and were fraudulent under the Act. We affirm the judgment of the circuit court of Cook County in its entirety.

¶ 50 Affirmed.