SO ORDERED.
SIGNED this 27th day of March, 2025

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.

Suzanne H. Bauknight
CHIEF UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

In re

AARON W. LEHNERT

Debtor

Case No. 3:23-bk-30080-SHB
Chapter 7

JOHN P. NEWTON, TRUSTEE

Plaintiff

v.

SHANNON RENEE (LEHNERT) ROESNER

Defendant

Adv. Proc. No. 3:23-ap-3021-SHB

MEMORANDUM AND ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AS TO CLAIMS ASSERTED PURSUANT TO 11 U.S.C. § 548(a)(1)(B) AND TO DISMISS CLAIMS PURSUANT TO 11 U.S.C. § 548(a)(1)(A)

Plaintiff commenced this adversary proceeding by filing his Complaint on September 1, 2023 [Doc. 1], which he amended on March 29, 2024 [Doc. 32[1]] (collectively "Complaint"),

[1] The Amended Complaint was filed with permission from the Court following oral argument held February 29, 2024, on Defendant's Motion to Dismiss and Supporting Memorandum of Law filed on December 15, 2023 ("Dismissal Motion") [Doc. 24].

seeking to avoid, pursuant to 11 U.S.C. § 548(a)(1)(A) or (B), a transfer of funds to Defendant from the sale of property that she held jointly with Debtor, to be preserved for the benefit of the estate under 11 U.S.C. § 551. On April 30, 2024, Defendant filed a Motion for Summary Judgment as to Claims Asserted Pursuant to 11 U.S.C. § 548(a)(1)(B) and to Dismiss Claims Pursuant to 11 U.S.C. § 548(a)(1)(A) ("Motion") [Doc. 36.] The Motion is supported by a Statement of Undisputed Facts as required by E.D. Tenn. LBR 7056-1(a) and a brief as required by E.D. Tenn. LBR 7007-1(a) [Docs. 37, 38[2]]. Defendant also relies on her Affidavit, attached as Exhibit 1 [Doc. 36-4] and the following exhibits: (A) Change in Terms Agreement dated August 16, 2019 [Doc. 36-5]; (B) Guarantor Release dated August 16, 2019 [Doc. 36-6]; (C) Settlement Statement for the sale of 2811 E. Lamar Alexander Parkway, Maryville, Tennessee ("Parkway Property") printed on February 17, 2021 [Doc. 36-7]; (D) Closing Disclosure dated February 19, 2021 [Doc. 36-8]; and (E) Quit Claim Deed executed by Defendant on February 26, 2020, and recorded with the Blount County Register of Deeds on February 28, 2020 [Doc. 36-9].

Plaintiff timely filed his opposition to the Motion [Doc. 51], which is supported by Defendant's Response to Plaintiff's First Interrogatories and Request for Production of Documents to Defendant ("First Discovery Responses") executed on August 30, 2024,[3] that

[2] The Statement of Undisputed Facts and brief were filed erroneously as attachments in the same docket entry as the Motion rather than as separate documents. [*See* Docs. 36-1, 36-2.] The documents were filed separately on the docket on May 1, 2024, following a courtesy call from chambers. Additionally, as stated in the Motion, as it relates to her request to dismiss the 11 U.S.C. § 548(a)(1)(A) cause of action, Defendant relies on the arguments raised in her Dismissal Motion. [Doc. 36 at p. 2 (referencing Doc. 24)].

[3] Of the twenty-seven interrogatories posited to Defendant, she objected to twenty-five before providing any further response. [*See* Doc. 51-1 at pp. 2-13.] She objected to twenty for being "vague, overbroad and unduly burdensome"; to nineteen "on the grounds that Plaintiff is impermissibly attempting to shift his burden to prove his claims"; and to eighteen on the basis that they were not "related to the Plaintiff's Rule 56(d) motion" and/or "constitute[d] unwarranted contention discovery at this stage of the case." [*Id*.] In addition, Defendant objected to all nine document requests, stating for five that "[t]he request would take an unreasonable amount of time or money to fulfill in relation to the reasonable needs of the case, is not reasonably related to any claim or defense," and that "there exists no good reason to go beyond the ordinary scope of discovery under Rule 26(b)." [*Id.* at pp. 14-16.] Plaintiff has not moved to compel responses over Defendant's objections.

incorporate therein the Divorce Decree between Debtor and Defendant entered on August 19, 2021 ("Final Decree"); the Debtor and Defendant's Marital Dissolution Agreement filed on August 4, 2021 ("MDA"); and Defendant's Response to Plaintiff's Amended First Interrogatories and Request for Production of Documents ("Amended Discovery Responses") executed on October 17, 2024[4] [collectively Doc. 51-1]; his response to the Statement of Undisputed Facts [Doc. 53]; and a brief [Doc. 52].

For the reasons stated, the Court finds that Plaintiff sufficiently pleaded facts to state a claim on which relief can be granted pursuant to 11 U.S.C. § 548(a)(1)(A) for actual fraud. Additionally, because there is a genuine dispute as to material facts concerning reasonably equivalent value and insolvency under 11 U.S.C. § 548(a)(1)(B), Defendant is not entitled to summary judgment.

I. UNDISPUTED FACTS

Defendant is Debtor's former spouse. [Docs. 37, 53 at ¶ 2.[5]] During the marriage, Debtor and Defendant purchased and held title in their individual names to real property located at 2811 E. Lamar Alexander Parkway, Maryville, Tennessee ("Parkway Property"). [Docs. 37, 53 at ¶ 5; Doc. 36-4 at ¶ 6.] Fifth Third Bank held the first mortgage on the Parkway Property, which was purchased to serve as both their residence and an investment. [Docs. 37, 53 at ¶ 9; Doc. 51-1 at ¶ 4.] Debtor and Defendant lived in the home on the Parkway Property until approximately 2017, after which they rented it. [Docs. 37, 53 at ¶ 8; Doc. 36-4 at ¶ 8.] Debtor and Defendant also owned real property located at 608 Fontana in Maryville, Tennessee ("Fontana Property"), 3232

[4] Before providing any further response, Defendant objected to both amended interrogatories as, among other things, "vague, broad and overly burdensome." [Doc. 51-1 at pp. 29-31.] Plaintiff has not moved to compel responses over Defendant's objections.

[5] Debtor and Defendant began their divorce proceedings in 2019 and were married until entry of the Final Decree on August 19, 2021. [Doc. 36-4 at ¶ 3; Doc. 51-1 at 18-19.]

Topside Road in Knoxville, Tennessee ("Topside Road Property"), and in Nicaragua. [Docs. 37, 53 at ¶ 24; Doc. 51-1 at pp. 22, 24.] The MDA required Debtor and Defendant to sell the undeveloped property in Nicaragua and equally divide the proceeds as well as any costs to maintain and sell the property. [Doc. 51-1 at p. 2 ¶ 1.] Further, under the MDA, Debtor would be responsible for all tax liability on the Fontana Property, but he and Defendant would be liable equally for tax liabilities on the Parkway Property and the Topside Road Property. [*Id*. at ¶ 13.]

Debtor was the sole owner and stockholder of a construction and remodeling business known as A&M Building and Contracting, Inc.[6] ("A&M"). [Docs. 37, 53 at ¶ 3; Doc. 36-4 at ¶¶ 4, 5.] Debtor operated A&M from the garage he constructed on the Parkway Property after he and Defendant no longer resided there. [Docs. 37, 53 at ¶ 6; Doc. 36-4 at ¶¶ 7-8.] Debtor was "awarded" A&M in the divorce, was "solely responsible for any and all debts associated with A&M," and was required to indemnify and hold Defendant harmless. [Doc. 51-1 at p. 22 ¶ 2.]

Two years before the parties began divorce proceedings, in August 2017, A&M obtained a $100,000.00 commercial loan line of credit ("A&M Loan") from Foothills Bank & Trust, predecessor in interest to SmartBank, for which Debtor and Defendant executed a deed of trust pledging the Parkway Property as collateral. [Docs. 37, 53 at ¶¶ 10, 11; Doc. 36-5.] Debtor and Defendant also personally guaranteed the A&M Loan; however, Defendant was released as guarantor through the Guarantor Release dated August 16, 2019. [Docs. 37, 53 at ¶¶ 12, 14; Doc. 36-5; Doc. 36-6.] Also on August 16, 2019, Debtor, who signed as President of A&M and separately as personal guarantor, entered into a Change in Terms Agreement with SmartBank that (1) renewed the A&M Loan; (2) changed the interest rate from fixed to variable of WSJP + 0.50%; (3) added a floor rate of 5.00%; (4) added a cap rate of 24%; (5) released Defendant as a

[6] A&M Building and Contracting, Inc. filed Chapter 7 Case No. 3:22-bk-31474-SHB on October 3, 2022.

guarantor; and (6) extended the maturity date. [Doc. 36-5; *see also* Docs. 37, 53 at ¶ 13.]

In February 2020 (after Debtor and Defendant separated), Defendant executed a Quit Claim Deed conveying her interest in the Fontana Property to Debtor.[7] [Doc. 36-9; *see also* Docs. 37, 53 at ¶ 24.] One year later, on February 19, 2021, Debtor and Defendant sold the Parkway Property for $273,000.00. [Docs. 37, 53 at ¶ 16; Doc. 36-8.] As reflected in the Closing Disclosure, which was signed by Debtor, the following line-items were paid from the sale proceeds:

Closing Costs Paid at Closing		$17,120.00
Payoff of First Mortgage Loan		$81,132.96
Payoff of Second Mortgage Loan		$85,926.15
2020 County Property Taxes	CLT# 059-006.01-001	$1,290.00
2020 Personal Property Taxes	CLT# 059-006.01-002	$775.00
Seller Credit		$2,000.00
County Taxes	01/01/21 to 02/20/21	$114.25

[Doc. 36-8.] The remaining cash proceeds totaling $84,641.64 ("Sale Proceeds") were paid to Defendant.[8] [Doc. 36-8.] Debtor also paid Defendant $642.25. [Docs. 37, 53 at ¶ 20.] The parties do not dispute that the sale of the Parkway Property eliminated Debtor's personal liability to both Fifth Third Bank (for the first mortgage) and SmartBank (for the second mortgage relating to the A&L Loan for which Debtor was a guarantor), which benefited him financially. [*Id*. at ¶ 22.]

The Final Decree completing the Debtor and Defendant's divorce was entered on August 19, 2021. [Doc. 51-1 at 18-19.] Approximately seventeen months later, on January 18, 2023,

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[7] The sole reference to the Fontana Property in the MDA references Debtor's tax liability arising from a sale of the Fontana Property. [Doc. 51-1 at p. 24 ¶ 13.] Defendant avers that she and Debtor agreed after separating that he would finish construction on the Fontana Property so that he would have a place to live but that it was her understanding that Debtor sold the Fontana property for $180,000.00 (subject to an $80,000.00 mortgage) in October 2020. [Doc. 36-4 at ¶¶ 16-17.]

[8] Payment of the entirety of the Sale Proceeds to Defendant is the transfer Plaintiff seeks to avoid through this adversary proceeding (the "Transfer"). Plaintiff has not sought to avoid the $85,926.15 payment to SmartBank on the A&L Loan from the Sale Proceeds.

Debtor filed the Voluntary Petition commencing his Chapter 7 bankruptcy case, and Plaintiff was appointed as Chapter 7 Trustee. [Docs. 37, 53 at ¶¶ 1-2.]

II. ANALYSIS

A. Fraudulent Transfers Under § 548(a)(1)

Trustees are authorized to avoid fraudulent transfers under 11 U.S.C. § 548(a)(1), which states, in material part:

> (a)(1) The trustee may avoid any transfer . . . of an interest of the debtor in property, or any obligation . . . incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily –
>
> . . .
>
> (A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or
>
> (B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and
>
> (ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;
>
> (II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;
>
> (III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or
>
> (IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.[9]

11 U.S.C. § 548(a)(1). The Bankruptcy Code defines "value" for purposes of § 548 as "property,

[9] Plaintiff did not include as a basis of recovery Tennessee's constructive fraud statute, Tennessee Code Annotated section 66-3-306(a) or (b).

or satisfaction or securing of a present or antecedent debt of the debtor," 11 U.S.C. § 548(d)(2)(A), and as it relates to this adversary proceeding, "transfer" means "each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with – (i) property; or (ii) an interest in property." 11 U.S.C. § 101(54)(D).

Plaintiff bears the burden of proving all statutory elements of § 548(a)(1) by a preponderance of the evidence; however, he is not required to prove an element of intent for the transfer to be avoided as "constructively" fraudulent under subsection (a)(1)(B). *Lisle v. John Wylie & Sons, Inc.* (*In re Wilkinson*), 196 F. App'x 337, 341 (6th Cir. 2006). As for claims under subsection (a)(1)(A), "[b]ecause proof of actual intent to hinder, delay, or defraud creditors may rarely be established by direct evidence, courts infer fraudulent intent from the circumstances surrounding the transfer." *Schilling v. Heavrin* (*In re Triple S. Rests, Inc.*), 422 F.3d 405, 416 (6th Cir. 2005).

B. The Parties' Arguments

Defendant seeks to dismiss the 11 U.S.C. § 548(a)(1)(A) action, arguing that "Plaintiff's complaint, as amended, while alleging an actual fraudulent transfer under § 548, still fails to satisfy the particularity requirements of Rule 9(b) . . . [and] is simply devoid of any factual allegations that would support an allegation of intent to hinder, delay or defraud." [Doc. 36 at p. 2.] She also relies on her arguments in the Dismissal Motion filed in December 2023 that the Complaint did not include any allegations "that could be considered badges of fraud" or facts sufficient "'to allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" [Doc. 24 at pp. 2, 3 (quoting *C&C Wine & Spirits, Inc. v. Pa. Nat'l Mut. Cas. Ins. Co.*, No. 23-cv-01024-JRM-jay, 2023 WL 3871714, at *2 (W.D. Tenn. June 7, 2023) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).]

With respect to summary judgment on the § 548(a)(1)(B) constructive fraud claim, Defendant argues that "there is no genuine issue of fact that Aaron Lehnert received reasonably equivalent value" because "[h]e held a 50% interest in the jointly owned property[and] . . . received 50% of the proceeds of the sale of the jointly owned property and resulting reduction of his personal debt." [Doc. 38 at p. 2.] Arguing that the focus should be "on what the Debtor received and the net effect of the transfer on the debtor's estate, [specifically] the funds available for unsecured creditors[,]" Defendant asserts:

> Debtor was entitled to and did receive 50% of the net sales proceeds[, and he] . . . used his 50% of the net sales proceeds to satisfy his guaranty obligation. His estate is no worse off as Debtor was never entitled to more than he received, and Debtor's proceeds must satisfy his secured guaranty before paying unsecured creditors.

[*Id*. at p. 3.]

As to actual fraud under § 548(a)(1)(A), Plaintiff disputes that Debtor received a direct benefit by payment of the A&M Loan to SmartBank because it was a business loan and there was no proof that Debtor's guaranty had been triggered. [Doc. 52 at p. 2.] Plaintiff argues that Debtor was insolvent when the Parkway Property was sold in February 2021 and that Debtor and Defendant would have known that Debtor could not satisfy his debts when Defendant received the Sale Proceeds. [*Id*. at pp. 3-4.] Plaintiff also argues that Debtor's "signing the closing statement and giving the 100% of the net proceeds payable jointly to both parties from the jointly owned property, that was a badge of fraud . . . and [Debtor's] signature on that closing statement is further proof that he agreed to make such fraudulent conveyance." [*Id*. at p. 3.] Plaintiff relies on his allegations in the Complaint that "Debtor would have known his financial status during [the two years before filing his case] and that the [Parkway Property] was the last valuable piece of property he owned jointly with his spouse at the time and, received zero of the joint proceeds from such closing"; therefore, Plaintiff asserts that he "has made sufficient allegations in the

Amended Complaint to state a claim for avoidance of the transfer as the circumstances surrounding the transfer indicate intent to hinder, delay or defraud a creditor." [*Id*. at p. 4.]

Concerning the constructive fraud allegations for his § 548(a)(1)(B) claim, Plaintiff asserts that whether Debtor received reasonably equivalent value for the Transfer is a disputed fact because only A&M signed the promissory note for the A&M Loan and, further, because there was no proof that Debtor's guaranty of the debt was "triggered" by the fully secured note. [*Id*. at p. 2.] Thus, Plaintiff argues, Debtor did not receive any direct benefit from satisfaction of the A&M Loan from the Parkway Property sale. [*Id*.] Plaintiff also argues that his interview with Debtor's divorce attorney raises disputed facts because there were no discussions during the divorce negotiations that Defendant would be entitled to receive the entire net proceeds from the sale of the Parkway Property, nor did the MDA or Final Decree contain any such agreement. [*Id*. at p. 3.] Finally, Plaintiff argues that "Defendant does not even an attempt to eliminate that disputed fact that the Debtor was insolvent at that time as she clearly states in her Undisputed Facts that this is a disputed fact." [*Id*.]

C. The § 548(a)(1)(A) Claim

Defendant seeks dismissal of the § 548(a)(1)(A) claim under Rule 12(b)(6)[10] of the Federal Rules of Civil Procedure, which requires dismissal for "failure to state a claim upon which relief can be granted." Defendant argues that Plaintiff has not pleaded his claim with particularity and the Complaint "is simply devoid of any factual allegations that would support an allegation of intent to hinder, delay or defraud." [Doc. 36 at p. 2.]

When deciding whether to dismiss under Rule 12(b)(6), a court must "construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all

[10] Rule 12 is applicable in adversary proceedings under Federal Rule of Bankruptcy Procedure 7012.

reasonable inferences in favor of the plaintiff." *Bassett v. Nat'l Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008) (quoting *Directv, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007)). The Court must also "'consider[] the complaint in its entirety, as well as . . . documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.'" *Solo v. United Parcel Serv. Co*., 819 F.3d 788, 794 (6th Cir. 2016) (alteration in original) (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd*., 551 U.S. 308, 322 (2007)); *see also Spier v. Coloplast Corp.*, 121 F. Supp. 3d 809, 813 (E.D. Tenn. 2015) ("[M]atters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint also may be taken into account [when reviewing a Rule 12(b)(6) motion]." (citations omitted)). Here, the Amended Complaint filed on March 29, 2024, included the attached Closing Disclosure, Closing Disclosure Form Addendum, and ALTA Settlement Statement – Seller [Doc. 32].[11]

Under Federal Rule of Civil Procedure 8(a), a complaint must contain "(1) a short and plain statement of the grounds for the court's jurisdiction . . . ; (2) a short and plain statement of the claim showing . . . entitle[ment] to relief; and (3) a demand for the relief sought, which may include relief in the alternative or different types of relief." Fed. R. Civ. P. 8(a).[12] "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

> While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of [its] entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must

[11] The initial Complaint filed on September 1, 2023, also included the Closing Disclosure, Closing Disclosure Form Addendum, and ALTA Settlement Statement – Seller. [Doc. 1.]

[12] Rule 8 is applicable in adversary proceedings under Federal Rule of Bankruptcy Procedure 7008.

be enough to raise a right to relief above the speculative level.

Twombly, 550 U.S. at 555 (citations and internal quotation marks omitted).

Although a complaint will survive a motion to dismiss if it contains "either direct or inferential allegations respecting all material elements," courts are not required to "accept as true legal conclusions or unwarranted factual inferences, and conclusory allegations or legal conclusions masquerading as factual allegations will not suffice." *Philadelphia Indem. Ins. Co. v. Youth Alive, Inc*., 732 F.3d 645, 649 (6th Cir. 2013) (quoting *Terry v. Tyson Farms, Inc*., 604 F.3d 272, 275-76 (6th Cir. 2010)). Additionally, "a party must state with particularity the circumstances constituting fraud or mistake" under Federal Rule of Civil Procedure 9(b),[13] but "Rule 9(b) does not require omniscience; rather the Rule requires that the circumstances of the fraud be pled with enough specificity to put defendants on notice as to the nature of the claim." *Williams v. Duke Energy Int'l, Inc*., 681 F.3d 788, 803 (6th Cir. 2012) (citation omitted).

Under Sixth Circuit authority, the "heightened pleading requirement for claims alleging fraud . . . 'must specify "the who, what, when, where, and how" of the alleged [fraud].'" *Smith v Gen. Motors LLC*, 988 F.3d 873, 884 (6th Cir. 2021) (citations omitted). Accordingly, courts analyze the adequacy of the pleading "under the *Twombly*/*Iqbal* framework" and will find Rule 9(b) satisfied if the plaintiff alleges the following: "(1) 'the time, place, and content of the alleged [fraud],' (2) 'the fraudulent scheme,' (3) the defendant's fraudulent intent, and (4) the resulting injury." *Id*. at 883 (citations omitted).

Whether a transfer is fraudulent under § 548(a)(1)(A) is often presumed through the presence of badges of fraud, which are facts throwing suspicion on the transaction that call for an explanation. *Holcomb Health Care Servs., LLC v. Quart Ltd., LLC* (*In re Holcomb Health Care*

[13] Rule 9 is applicable in adversary proceedings under Federal Rule of Bankruptcy Procedure 7009.

Servs., LLC), 329 B.R. 622, 670 (Bankr. M.D. Tenn. 2004); *see also Triple S Rests., Inc.*, 422 F.3d at 414 ("Badges of fraud are circumstances so frequently attending fraudulent transfers that an inference of fraud arises from them." (citation omitted)). These badges of fraud, as detailed by this Court in 2006, in *Gordon v. Courtney* (*In re Courtney*), 351 B.R. 491, 500 (Bankr. E.D. Tenn. 2006)[14], were recently cited with approval by the Bankruptcy Court for the Eastern District of Michigan for its analysis under § 548(a)(1)(A):

> (i) the lack of adequate consideration for the transfer; (ii) the family, friendship, or close relationship between the parties; (iii) the retention of possession, benefit, or use of the property in question by the debtor; (iv) the financial condition of the party sought to be charged prior to and after the transaction in question; (v) the conveyance of all of the debtor's property; (vi) the secrecy of the conveyance; (vii) the existence or cumulative effect of a pattern or series of transactions or course of conduct after incurring of debt, onset of financial difficulties, or pendency or threat of suit by creditors; and (viii) the general chronology of events and transactions under inquiry.
>
> . . . .
>
> Additional factors indicating a debtor's actual intent include
>
> > whether the transaction is conducted at arm's length; whether the debtor is aware of the existence of a significant judgment or over-due debt; whether a creditor is in hot pursuit of its judgment or claim and whether the debtor knows this; and the timing of the transfer relative to the filing of the petition.

In re Wylie, 665 B.R. 144, 181 (Bankr. E.D. Mich. 2024) (internal citations omitted). "If the party alleging fraud is able to demonstrate a sufficient number of badges, the burden of proof then shifts to the defendant to prove that the transfer was not fraudulent." *Renneker v. Wyman* (*In re Wyman),* 626 B.R. 480, 497 (Bankr. S.D. Ohio 2021) (citations omitted).

After identifying the parties and the details of the Transfer, Plaintiff alleges in the Complaint that, based in part on his interview with Debtor's divorce attorney, payment of the

[14] Although the analysis in *In re Courtney* concerned intent to hinder, delay, or defraud in the context of an objection to discharge under 11 U.S.C. § 727(a)(2)(A), courts utilize the same badges of fraud for a § 548(a)(1)(A) analysis.

entire Sale Proceeds to Defendant from the Parkway Property sale was not contemplated or negotiated through the divorce, is not reflected in either the MDA or Final Decree, and Debtor did not receive any actual consideration for the Transfer, nor could he produce any documentation or information to support any consideration. [Doc. 32 at ¶¶ 8, 12-13.] Plaintiff also alleges that Debtor and Defendant sold other properties before the Parkway Property, which they jointly purchased in 2008 for $127,500.00 primarily from business income received from A&M, and that Debtor's tax returns for 2021 and 2022 reflect that he was insolvent at the time of the divorce, when the only marital property he received was A&M, which had no value and was significantly in debt. [*Id*. at ¶¶ 10-11, 13.] Plaintiff additionally asserts that because the business was not profitable at the time of the divorce, "such agreement to give that ownership [of A&M] exclusively to the Debtor along with the obligation to pay all of its debt was a significant inequity in their divorce agreement." [*Id* at ¶ 13.]

Next, Plaintiff alleges that Debtor's assets and liabilities were $62,111.00 and $4,564,055.89, respectively, when he filed his bankruptcy case, which was approximately three months after A&M filed its case and just over a year after the divorce that awarded him all interests in A&M. [*Id*. at ¶ 9.] Plaintiff further alleges that Debtor had valued A&M's stock at $0.00 in his 2022 tax return, A&M was insolvent when it filed its Chapter 7 case based on its debts totaling $749,074.00 compared to assets of $551,724.00, and that Debtor, too, "was insolvent or . . . became insolvent by January 2023." [*Id*.]

Plaintiff then alleges the following concerning the A&M Loan and Debtor's guaranty thereof:

> 14. The second mortgage taken out on the [Parkway Property] was taken out in approximately 2017 and upon information and belief the funds were used to provide working capital or pay debts of the business retained by the Debtor. The second mortgage note was repaid at the February 2021 sale of the property, but the debt

> recited in the Deed of Trust was not an obligation of either party individually but rather the obligation of the business entity. Therefore, the Debtor, Aaron Lehnert, did not receive any direct benefit from such payment but rather the company received the benefit. Each party would have a joint claim against the company for such money at the time of such transfer of equity and/or proceeds from the sale of the property. In August 2021, the Defendant gave up any rights to recover such money or property for the payment of the company note in February 2021 by agreeing to convey A&M as consideration in the divorce. Therefore, the transfer of the equity entirely to the Defendant at closing in the amount of $84,641.64 was a transfer at a minimum of 50% of the Debtor's equity in such property at the time of such transfer for no consideration or less than equivalent consideration to the Debtor at a time the Debtor was insolvent.
>
> 15. It is the Trustee's position that the transfer or gift of equity on that date was for no consideration and/or for less than equivalent value or alternatively made with the actual intent to hinder, delay or defraud creditors of the debtors owed at the time of such transfer
>
> 16. Prior to the 341 the Trustee received the tax return for 2021 showing the loss for 2021 was $32,789 for the LLC. Upon information and belief based on the tax return for 2021 and 2022 and information the Trustee received, along with examining the bankruptcy records of the A&M Building and Contracting, Case #22-31474, it is clear that the Debtor was well aware that the building business had insignificant value or cash flows and was insolvent in 2021 at the time he agreed to give the Defendant all of the proceeds.

[*Id*. at ¶¶ 14-16.]

In an apparent summary, Plaintiff next avers the following and requests avoidance of at least $42,320.82 from Defendant for Debtor's one-half interest in the proceeds from the sale of the Parkway Property:

> 17. The transfer of entire equity to the Defendant of the $84,641.64 without reasonable equivalent value while insolvent on that date or thereafter he became insolvent and intended to incur or believed would incur debts beyond the Debtor's ability to pay which constitutes a fraudulent conveyance pursuant to 11 U.S.C. § 548(a)(1)(B) which is avoidable by the Plaintiff as Trustee for the debtor.
>
> 18. Based upon the facts known to the Debtor of the financial condition of his business and the amount of his debt during this time frame, the transfer by the Debtor on February 19, 2021, was with the intent to hinder, delay or defraud creditors owed by the debtors at that time and scheduled in this case or occurred within the two years prior to filing the petition in this case. Alternately the Debtor became indebted to a scheduled creditor in this case after the transfer and such

> transfer is therefore avoidable under either alternative theory of avoidance under 11 U.S.C. § 548(a)(1)(A).

[*Id*. at ¶¶ 17-18.]

The Court recognizes that, organizationally, the Complaint does not include a division of the causes of action and does not clearly delineate under which theory of § 548(a)(1) each factual allegation relates. These drafting deficiencies aside, the Court finds that when construing it in a light most favorable to Plaintiff and drawing all inferences in his favor, the Complaint satisfies the procedural requirements of Rules 8(a) and 9(b) and states a claim on which relief can be granted for actual fraud under § 548(a)(1)(A) by identifying the who, what, when, and where of the alleged fraud. Accepting all factual allegations as true, the Complaint alleges the presence of at least four interrelated badges of fraud: a lack of adequate consideration for the Transfer, the relationship between the parties to the Transfer, whether the Transfer was conducted at arm's length based on the relationship between Debtor and Defendant, and Debtor's financial condition both at the time of and after the Transfer.[15] *See In re Courtney*, 351 B.R. at 500.

D. The 11 U.S.C. § 548(a)(1)(B) Claim

Defendant seeks dismissal of Plaintiff's § 548(a)(1)(B) claim under Federal Rule of Civil Procedure 56,[16] which directs that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law[,]" utilizing the procedures defined in subsections (c)(1) through (c)(4). When deciding a summary judgment motion, the Court may not weigh the evidence to determine the truth of the matter asserted but simply determines whether a genuine issue for trial exists, and

[15] Additionally, because the burden shifts from a trustee who has established that badges of fraud are present to the defendant to prove that the transfer in question was not fraudulent, there is a genuine dispute as to material facts that also would preclude summary judgment as to the § 548(a)(1)(A) claim.

[16] Rule 56 is applicable to adversary proceedings under Federal Rule of Bankruptcy Procedure 7056.

"[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). The court must view the facts and all resulting inferences in a light most favorable to the non-moving party to decide whether "the evidence presents a sufficient disagreement to require submission to a [fact-finder] or whether it is so one-sided that one party must prevail as a matter of law." *Id.* at 243.

"A genuine issue of material fact exists when 'there is sufficient evidence favoring the nonmoving party for a [fact-finder] to return a verdict for that party.'" *Laster v. City of Kalamazoo*, 746 F.3d 714, 726 (6th Cir. 2014) (quoting *Anderson*, 477 U.S. at 249). Defendant, as movant, bears the initial burden of proving that the record presented to the Court establishes the lack of a genuine dispute of material fact such that she is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986); *Burns v. Mahle Engine Components USA, Inc.*, 605 F. App'x 522, 525 (6th Cir. 2015) ("The party requesting summary judgment bears an initial burden of demonstrating that no genuine issue of material fact exists, which it must discharge by producing evidence to demonstrate the absence of a genuine issue of material fact or 'by showing . . . that there is an absence of evidence to support the nonmoving party's case.'" (quoting *Celotex Corp.*, 477 U.S. at 325 (internal quotation marks omitted)).

"A party asserting that a fact cannot be or is genuinely disputed must support the assertion by . . . citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials[.]" Fed. R. Civ. P. 56(c)(1)(A). If the initial burden of proof is met, the burden shifts to the nonmoving party to prove a genuine dispute of material facts for trial, but because "[a] mere

scintilla of evidence in support of the nonmoving party will not be sufficient," reliance solely on allegations or denials contained in the pleadings is insufficient. *Nye v. CSX Transp., Inc.*, 437 F.3d 556, 563 (6th Cir. 2006); *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) ("[T]he issue of fact must be 'genuine.' When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.").

In this case, the parties do not dispute the first two elements of § 548(a)(1)(B): that Debtor had an interest in the Parkway Property and that the Transfer occurred within two years before the case was filed. Thus, Plaintiff's cause of action depends on resolution of the final two elements – (1) whether Debtor was insolvent[17] at the time of the transfer or became insolvent as a result of the transfer and (2) whether he received less than a reasonably equivalent value in exchange for the transfer. Thus, to prevail on summary judgment, Defendant must show that there is no genuine dispute of material fact as to either element.

Based on the documents filed, the Court can easily find that there is a genuine dispute as to many material facts concerning Debtor's insolvency both at the time of the Transfer and after. In fact, Defendant expressly asserts in her Statement of Undisputed Facts that Debtor's insolvency as of the Transfer date is disputed. [Doc. 37 at ¶ 26.] Notably, Defendant does not address insolvency in her Motion or the supporting brief. [*See* Docs. 36, 38.] Defendant's sole argument in favor of her request for summary judgment is that there is no genuine issue of material fact concerning whether Debtor received reasonably equivalent value from the Transfer.

[17] "Insolvent" means "[the] financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of – (i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity's creditors; and (ii) property that may be exempted from property of the estate under section 522 of this title[.]" 11 U.S.C. § 101(32)(A).

Although the Bankruptcy Code does not define "reasonably equivalent value," whether a debtor received reasonably equivalent value in exchange for a transfer "is a question of fact . . . , [and a] court considering this question should first determine whether the debtor received any value in the exchange. If so, the court should determine if the value received was reasonably equivalent." *Lisle v. John Wiley & Sons, Inc*. (*In re Wilkinson*), 196 F. App'x 337, 341 (6th Cir. 2006); *see also Gold v. Wall* (*In re Wall*), 661 B.R. 365, 380 (Bankr. E.D. Mich. 2024) ("Ultimately, a court should consider all the facts and circumstances in making the 'reasonably equivalent value' determination, keeping in mind that any significant disparity between the value received . . . by the debtor-transferor will significantly harm innocent creditors." (citation omitted)); *Spradlin v. East Coast Miner, LLC* (*In re Licking River Mining, LLC*), 603 B.R. 336, 366 (Bankr. E.D. Ky. 2019) ("Whether a debtor received 'less than equivalent value' under § 548(a)(1)(B) 'is a factual finding by the Court . . . ."). Additionally, "[t]his determination depends on the circumstances of each case and not on a fixed mathematical formula." *In re Wilkinson*, 196 F. App'x at 341.

Because "a debtor is not required to collect a 'dollar-for-dollar equivalent,'" the court must "look to the net effect of the transfer or obligation on the debtor's estate and, more specifically, on the remaining funds available to the unsecured creditors." *Suhar v. Bruno* (*In re Neal*), 541 F. App'x 609, 611-12 (6th Cir. 2013) (citations omitted). Further, because "the standards for measuring the fairness of a property division in the domestic relations arena and reasonably equivalent value in a fraudulent transfer case are separate and distinct," the Court cannot presume that the division would satisfy the requirements of § 548(a) when examining whether provisions within a divorce decree constitute reasonably equivalent value so that it must conduct its own analysis. *Corzin v. Fordu (In re Fordu)*, 201 F.3d 693, 707 (6th Cir. 1999).

Whether Debtor received reasonably equivalent value in the Parkway Property sale is a question of fact that cannot be answered based on the record presently before the Court. The parties do not dispute that when the Parkway Property was sold, Debtor's personal liability to both Fifth Third Bank and SmartBank was eliminated, thereby bestowing on him a financial benefit. Nor do they dispute that when she received the Sale Proceeds, Defendant was Debtor's estranged spouse and the Transfer was contemplated within the course of their divorce. A genuine dispute of material facts exists, however, with respect to other circumstances of the Transfer, including at least the following:

- whether Debtor received any consideration for the Transfer in light of the MDA;
- whether payment of the second mortgage on the Parkway Property was properly assessed entirely to Debtor in light of the fact that both he and Defendant had lived in the Parkway Property and that both executed the deed of trust pledging the Parkway Property as collateral for the A&M Loan;[18]
- whether any of the A&M Loan proceeds were used to improve the Parkway Property, where Debtor and Defendant lived at the time of the A&M Loan; and
- whether the loan was in default such that the obligation to pay under the guaranty had been triggered.

The parties also expressly dispute whether Defendant received any proceeds from the A&M Loan [Docs. 37, 53 at ¶ 15], and there are questions of fact concerning Defendant's involvement

[18] Through his interrogatories, Plaintiff asked Defendant for specific information concerning how the Parkway Property, which the parties agreed was titled to Debtor and Defendant individually [*see* Docs. 37, 53 at ¶ 5], was purchased, including the source and amount of the down-payment to purchase the property, which are relevant facts to whether Debtor received consideration and if the Transfer was for reasonably equivalent value. [Doc. 51-1 at pp. 3.4, 2.] Defendant's answers to the First Discovery Responses that "she cannot recall . . . the source of the funds for the down payment" and the Amended Discovery Responses that "she does not recall this information and this information is not in her possession, custody or control" also raise issues of material fact. [*See* Doc. 51-1 at p. 4 ¶ 6; p. 29 ¶ 5.]

with A&M, both of which are facts relevant to the "award" of A&M and all liabilities associated therewith solely to Debtor in the divorce. [*See* Docs. 37, 53 at ¶¶ 4, 7, 27; Doc. 51-1 at p. 22.]

III. ORDER

For the forgoing reasons, the Court directs the following:

1. Defendant's Motion for Summary Judgment as to Claims Asserted Pursuant to 11 U.S.C. § 548(a)(1)(B) and to Dismiss Claims Pursuant to 11 U.S.C. § 548(a)(1)(A) filed on April 30, 2024 [Doc. 36], is DENIED.

2. Defendant shall file an answer to the Amended Complaint [Doc. 32] within 30 days after entry of this Order.

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