MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Rita M. Tafelski,

Appellant-Plaintiff,

v.

M & K Truck Centers of Gary, LLC,

Appellee-Defendant.

April 14, 2023

Court of Appeals Case No. 22A-CT-2167

Appeal from the Lake Superior Court

The Honorable John M. Sedia, Judge

Trial Court Cause No. 45D01-1304-CT-29

Memorandum Decision by Judge Bailey
Judges Brown and Weissmann concur.

Bailey, Judge.

Case Summary

[1] In this interlocutory appeal, Rita Tafelski appeals the trial court's grant of summary judgment in favor of M & K Truck Centers of Gary, LLC ("M&K") on Tafelski's claim to set aside a fraudulent conveyance. Tafelski raises one issue for our review, namely, whether the court erred when it entered summary judgment in favor of M&K. We affirm.

Facts and Procedural History[1]

[2] Tafelski is the daughter of Suzanne Neitzel, and Linda Salmon is Neitzel's sister and Tafelski's aunt. Neitzel died intestate in April 2012. According to Tafelski, prior to Neitzel's death, Salmon paid Neitzel $100.00 in exchange for Neitzel's shares in Pozzo Truck Center, Inc. and Pozzo Illinois, Inc. (collectively, "Pozzo").[2] At some point following Neitzel's death, Tafelski filed a complaint against Salmon in which she, in relevant part, sought the

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[1] In her Statement of the Case and Statement of the Facts, there are several instances where Tafelski either fails to cite to the record to support certain statements or simply cites to allegations in her amended complaint.

[2] There is no evidence in the record to demonstrate that Neitzel actually transferred stock to Salmon or, if she did, the value of that stock. While Tafelski references a "stock transfer agreement," she has not included any such agreement in the record on appeal. Appellant's Br. at 7. In a motion to supplement the record on appeal, Tafelski has asked this Court to consider a check paid to Neitzel by Salmon and Judson Salmon in the amount of $100.00. However, there is nothing on that check to show why Salmon and Judson paid Neitzel that money. *See* Appellant's App. Vol. 2 at 129.

imposition of a constructive trust over "[a]ll distributions made from [Neitzel's] assets during her lifetime by" Salmon. Appellant's App. Vol. 2 at 33.

[3] In August 2018, M&K entered into an asset purchase agreement ("the agreement") to purchase certain assets from Pozzo.[3] And the agreement listed Judson Salmon and Salmon as additional parties. *Id*. Pursuant to the agreement, M&K purchased "certain assets owned and used" by Pozzo as well as Pozzo's "business goodwill associated therewith" in exchange for $14 million.[4] *Id*.

[4] After she had learned of the agreement, Tafelski amended her complaint to add M&K as a defendant and to file a claim against M&K under Indiana's Uniform Fraudulent Transactions Act ("the Act") on the ground that the assets M&K had purchased from Pozzo "represent the value of the stock owned by [Neitzel] and acquired by [Salmon] under fraudulent terms and/or by the imposition of undue influence or by breaching fiduciary duties owed by" Salmon. *Id*. at 36.

[5] M&K filed a motion for summary judgment and alleged that it was entitled to judgment as a matter of law on Tafelski's fraudulent conveyance claim. In support of its motion, M&K designated as evidence the affidavit of M&K's general counsel, Lynn Esp; the agreement; and its interrogatories and requests

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[3] The agreement also identified two other sellers: Pozzo Leasing, Inc. and SBHC, LLC. In addition, a different entity originally purchased the Pozzo assets but assigned its rights to M&K shortly after the execution of the agreement.

[4] The purchase price has been redacted from the version of the agreement included in the record. However, both parties appear to agree that it was approximately $14 million.

for admission it had served on Tafelski. In her affidavit, Esp stated that M&K had "only purchased assets from Pozzo" and that it "did not purchase anything from" Salmon. *Id*. at 37. She further stated that the agreement "did not include M&K's purchase of any Pozzo stock" and that M&K "had no involvement in, knowledge of or connection to the alleged 2012 sale of stock" from Neitzel to Salmon. *Id*. at 38.

[6] In M&K's requests for admissions, Tafelski admitted that "M&K was not involved in any manner with the Pozzo stock transfer between" Neitzel and Salmon. *Id*. at 76. In addition, Tafelski admitted that she "did not inform M&K, or cause M&K to know, of the background and circumstances leading to the Pozzo stock transfer" and that the "assets purchased by M&K from [Pozzo] represented at a minimum the value of the Pozzo stock transferred from" Neitzel to Salmon. *Id*. at 77. And Tafelski admitted that she had "no documentation or evidence" to indicate "that M&K did not engage in an arm's-length transaction" when it purchased the Pozzo assets or "that M&K is not a bona fide, good-faith purchaser of the assets[.]" *Id*. at 77-78.

[7] Tafelski responded and filed her motion in opposition to summary judgment. In her response, Tafelski asserted that M&K "knew . . . or should have known that the assets it was purchasing were the subject of" her claim for a constructive trust such that summary judgment would not be appropriate. *Id*. at 94. To support her motion, Tafelski designated as evidence M&K's responses to her interrogatories in which Esp stated that M&K had "learned the assets of Pozzo were for sale on the date that the Asset Purchase Agreement was

signed." *Id*. at 99. Esp also stated that, as part of its due diligence, M&K had reviewed the "financial statements and inventory produced by Pozzo" and M&K's "knowledge of the industry and evaluating and valuing the assets of a truck dealership." *Id*. at 100.

[8] Tafelski also designated M&K's supplemental response to interrogatories, in which Esp clarified that, as a part of its due diligence, M&K "would have toured the property and confirmed with the Original Equipment Manufacturer the equipment being purchased, as well as transfer of the franchise rights." *Id*. at 108. Esp further stated:

> The information [M&K's] advisors reviewed would not have reflected any information regarding disputes over ownership and control of the assets because the terms of the Asset Purchase Agreement controlled the extent of the asset being acquired. The disputes raised in this lawsuit (ownership of the stock of Pozzo) would not have been part of the due diligence since [M&K] was not buying stock—only assets.

Id.

[9] In addition, Tafelski designated as evidence an email from M&K's attorney to her attorney in which M&K's attorney stated that "[t]here was no due diligence involved with determining the value of" Pozzo's franchise rights and equipment but that M&K "knows the value of the franchise, and its sales people inventoried the equipment and placed a value on them." *Id*. at 120. Following a hearing at which the parties presented oral argument, the court granted

M&K's motion for summary judgment. After the court certified its order as a final judgment and we accepted jurisdiction, this interlocutory appeal ensued.

Discussion and Decision

[10] Tafelski contends that the trial court erred when it entered summary judgment for M&K. The Indiana Supreme Court has explained that

> [w]e review summary judgment de novo, applying the same standard as the trial court: "Drawing all reasonable inferences in favor of . . . the non-moving parties, summary judgment is appropriate 'if the designated evidentiary matter shows 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.'" *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009) (quoting T.R. 56(C)). "A fact is 'material' if its resolution would affect the outcome of the case, and an issue is 'genuine' if a trier of fact is required to resolve the parties' differing accounts of the truth, or if the undisputed material facts support conflicting reasonable inferences." *Id*. (internal citations omitted).
>
> The initial burden is on the summary-judgment movant to "demonstrate [ ] the absence of any genuine issue of fact as to a determinative issue," at which point the burden shifts to the non-movant to "come forward with contrary evidence" showing an issue for the trier of fact. *Id*. at 761-62 (internal quotation marks and substitution omitted). And "[a]lthough the non-moving party has the burden on appeal of persuading us that the grant of summary judgment was erroneous, we carefully assess the trial court's decision to ensure that he was not improperly denied his day in court." *McSwane v. Bloomington Hosp. & Healthcare Sys*., 916 N.E.2d 906, 909-10 (Ind. 2009) (internal quotation marks omitted).

Hughley v. State, 15 N.E.3d 1000, 1003 (Ind. 2014) (omission and some alterations original to *Hughley*).

[11] Tafelski specifically contends that the court erred when it entered summary judgment in favor of M&K because there are genuine issues of material fact as to whether the sale of the Pozzo assets to M&K constituted a fraudulent conveyance under the Act. Pursuant to Indiana Code Section 32-18-2-14 (2023),

> (a) A transfer made or an obligation incurred by a debtor is voidable as to the 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 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 . . . .

The statute also outlines nine non-exhaustive factors to consider in determining actual intent under subsection (a)(1). *See* Ind. Code § 32-18-2-14(b).[5]

[5] M&K contends that the Act does not apply because Tafelski is not a creditor as to either Pozzo or M&K. Tafelski responds and argues that the Act does apply because Pozzo would be liable to her if she is successful on her claim for a constructive trust. For the sake of argument, we will assume without deciding that the Act applies.

[12] However, a "transfer or obligation is not voidable under section 14(a)(1) of this chapter against a person that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee." I.C. § 32-18-2-18(a). M&K had the burden below to demonstrate that subsection 18(a) applied. *See* I.C. § 32-18-2-18(f)(1). Here, Tafelski contends that genuine issues of material fact exist with respect to whether M&K had acted in good faith or paid a reasonably equivalent value. We address each in turn.

Good Faith

[13] Tafelski first contends that there is a genuine issue of material fact regarding whether M&K acted in good faith when it purchased Pozzo's assets. In particular, Tafelski contends that M&K lacked good faith because it "ignored" a subpoena and failed to retain copies of any due diligence documents and because Esp "may have been shown" a case document regarding Tafelski's claim for a constructive trust. Appellant's Br. at 13-14 (emphases removed). However, Tafelski's arguments are mere speculation. There is nothing in the record to show that M&K ignored a subpoena or that Esp was provided with a copy of any documents related to Tafelski's claim for a constructive trust.

[14] In support of its motion for summary judgment, M&K designated as evidence Esp's affidavit in which Esp stated that M&K "did not learn about the alleged 2012 sale of stock" from Neitzel to Salmon "until M&K was served with a subpoena in this litigation." Appellant's App. Vol. 2 at 38. In addition, Esp stated that M&K had no "knowledge of" either the alleged 2012 sale of stock or any of the events that led up to the 2012 sale of stock. *Id*. M&K also

designated as evidence Tafelski's responses to interrogatories in which Tafelski admitted that "M&K was not involved in any manner with the Pozzo stock transfer" between Neitzel and Salmon and that she did not "inform M&K, or cause M&K to know, of the background and circumstances leading to the Pozzo stock transfer" between Neitzel and Salmon. *Id*. at 76-77. And Tafelski admitted that she did not have any "documentation or evidence" to show that "M&K did not engage in an arm's-length transaction with Pozzo" when it purchased the assets in 2018 or to show that "M&K is not a bona fide, good-faith purchaser" of the Pozzo assets. *Id*.

[15] Further, Tafelski designated as evidence Esp's responses and supplemental responses to interrogatories. In those responses, Esp stated:

> The information [M&K's] advisors reviewed would not have reflected any information regarding disputes over ownership and control of the assets because the terms of the Asset Purchase Agreement controlled the extent of the assets being acquired. The disputes raised in this lawsuit (ownership of the stock of Pozzo) would not have been part of the due diligence since [M&K] was not buying stock—only assets.

Id. at 108. That designated evidence tends to show that M&K purchased Pozzo's assets without knowledge of the dispute between Tafelski and Pozzo, and Tafelski did not come forward with any contrary evidence.

[16] Still, Tafelski also briefly contends that, even if M&K did not have actual knowledge, it should have known about the dispute between Pozzo and Tafelski when it purchased Pozzo's assets. However, that argument is based

entirely on its allegation that Esp may or may not have been shown a document related to Tafelski's claim for a constructive trust. That argument is mere speculation and does not create a genuine issue of material fact as to whether M&K should have known of the dispute between Tafelski and Pozzo. The designated evidence demonstrates that M&K did not know, and there is no evidence that it should have known, about the dispute between Pozzo and Tafelski when it purchased Pozzo's assets.

[17] Tafelski also contends that a genuine issue of material fact exists on the good-faith element because there is no "proof of what documents M&K did, or did not, review in the due diligence period[.]" Appellant's Br. at 13. In other words, Tafelski contends that M&K did not conduct adequate due diligence and, as such, it cannot be a good-faith purchaser. To support her contention, Tafelski relies on M&K's supplemental response to her interrogatories in which Esp stated that the "documents produced in due diligence would remain in the possession of Pozzo." Appellant's App. Vol. 2 at 103. Tafelski also relies on Esp's statement that M&K "learned the assets of Pozzo were for sale on the day that the Asset Purchase Agreement was signed." *Id.* at 100.

[18] However, the mere facts that M&K did not retain copies of the documents it reviewed during its due diligence or that M&K purchased the assets the same day they officially became for sale do not create a genuine issue of material fact as to whether M&K conducted adequate due diligence or was a good faith purchaser. Rather, Tafelski's own designated evidence refutes her argument. Indeed, while Tafelski designated evidence to show that M&K entered into the

agreement on the same day it learned the assets were for sale, that same evidence also demonstrates that, "[p]rior to that time," there was a "general discussion" by the parties. *Id*. at 100. Stated differently, the parties did not merely conduct the entire transaction in one day. M&K and Pozzo had been in discussions for an unknown period of time before Pozzo officially agreed to sell and M&K agreed to purchase Pozzo's assets.

[19] Tafelski's designated evidence also demonstrates that, during that time, M&K conducted its due diligence. In response to Tafelski's interrogatories, Esp stated that M&K had reviewed the "financial statements and inventory produced by Pozzo[.]" *Id*. at 100. Further, in her supplemental responses, Esp clarified that, as a part of its due diligence, M&K "would have toured the property and confirmed with the Original Equipment Manufacturer the equipment being purchased, as well as transfer of the franchise rights." *Id*. at 108.

[20] M&K designated evidence to show that it did not know of the dispute between Tafelski and Pozzo and that it conducted adequate due diligence such that it was a good-faith purchaser. And Tafelski did not come forward with any contrary evidence to demonstrate that any genuine issue of material fact exists on this question.

Reasonably Equivalent Value

[21] Tafelski next contends that M&K did not present a "scintilla of evidence that [it] paid a reasonably equivalent value for the Pozzo assets." Appellant's Br. at 14. In particular, she alleges that the "deal was conducted in a single day," and

that M&K "did not appraise individual parts, pending sales, inventories of trucks for sale or lease, or any other asset purchased[.]" *Id*. Thus, she maintains that there is no evidence "to establish [that] the purchase price was fair." *Id*.

[22] But M&K designated as evidence Tafelski's admissions in which Tafelski admitted that that the "assets purchased by M&K from [Pozzo] represented at a minimum the value of the Pozzo stock transferred from" Neitzel to Salmon and that "the total value of stock owned by [Neitzel] immediately before the stock was transferred to [Salmon] was less than the total amount paid by M&K for the assets" of Pozzo *Id*. at 77. In other words, Tafelski admitted that M&K paid an amount equal to or in excess of the value of Pozzo's stock for Pozzo's assets.

[23] Further, and again, Tafelski's own designated evidence undermines her claims on appeal. In Esp's responses to Tafelski's interrogatories, Esp stated that M&K had relied on its "knowledge of the industry and evaluating and valuing the assets of a truck dealership." *Id*. at 100. And in an email from one of M&K's attorneys, that attorney stated that M&K "knows the value of the franchise, and its sales people inventoried the equipment and placed a value on them." *Id*. at 120. Thus, the designated evidence tended to show that the amount M&K had paid to Pozzo was based on its knowledge of the industry and the value it had placed on Pozzo's property and that it was at least equivalent to the value of Pozzo's stock. And, importantly, Tafelski did not come forward with any evidence to demonstrate that $14 million was not a

reasonably equivalent value to Pozzo's assets. We therefore hold that no genuine issue of material fact exists regarding whether M&K paid a reasonable price.

[24] It was M&K's burden as the summary-judgment movant to demonstrate the absence of any genuine issue of material fact with respect to whether it was a good-faith purchaser who had paid a reasonably equivalent value for Pozzo's assets. *See Hughley*, 15 N.E.3d at 1003. And M&K met this burden when it designated evidence to demonstrate that it did not know of the pending dispute between Tafelski and Pozzo, that it had performed its due diligence before purchasing Pozzo's assets, and that it paid a reasonably equivalent value. At that point, the burden shifted to Tafelski to come forward with contrary evidence. But Tafelski did not designate any evidence to show that there was a genuine issue of material fact. Indeed, she did not designate any evidence to demonstrate that M&K should have known about the pending dispute, that M&K did not adequately perform its due diligence, or that $14 million was not a reasonably equivalent value.

[25] The uncontroverted material facts demonstrate that M&K was a good-faith purchaser for a reasonably equivalent value. M&K has therefore met its burden to demonstrate that Indiana Code Section 32-18-2-18(a) applies, that its purchase of Pozzo's assets is not voidable under Indiana Code Section 32-18-2-14(a)(1), and that it is entitled to judgment as a matter of law.

Conclusion

[26] The designated evidence demonstrates that M&K was a good faith purchaser who obtained the assets of Pozzo for a reasonably equivalent value. As such, the sale of Pozzo's assets to M&K is not voidable, and the trial court did not err when it entered summary judgment in favor of M&K on Tafelski's claim under the act.[6] We affirm the trial court.[7]

[27] Affirmed.

Brown, J., and Weissmann, J., concur.

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[6] Because we hold that the transaction is not voidable under Indiana Code Section 32-18-2-14, we need not address Tafelski's arguments regarding the badges of fraud under Indiana Code Section 32-18-2-14(b) or Salmon's intent.

[7] We note that, should Tafelski succeed on her claim for a constructive trust over Pozzo's assets, the only effect the sale of Pozzo's assets had was to replace Pozzo's property with $14 million, and any trust Tafelski may obtain would include that money.