NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4350-13T4

MOTORWORLD, INC.,

Plaintiff-Respondent/
Cross-Appellant,

v.

WILLIAM BENKENDORF, GUDRUN
BENKENDORF, BENKS LAND
SERVICES, INC.,

Defendants-Appellants/
Cross-Respondents.

CATHERINE E. YOUNGMAN, Chapter 7
Trustee for Carole Salkind,

Plaintiff-Respondent/
Cross-Appellant,

v.

WILLIAM BENKENDORF, GUDRUN
BENKENDORF, BENKS LAND SERVICES,
INC.,

Defendants-Appellants/
Cross-Respondents.

Argued September 22, 2015 – Decided December 17, 2015

Before Judges Fisher, Espinosa and
Rothstadt.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket Nos. L-1947-11 and L-2038-12.

Diana C. Manning argued the cause for appellants/cross-respondents (Bressler, Amery & Ross, attorneys; Ms. Manning and Benjamin J. DiLorenzo, on the brief).

Joseph M. Cerra argued the cause for respondents/cross-appellants (Forman Holt Eliades & Youngman LLC, attorneys; Andrew J. Karas and Mr. Cerra, on the brief).

PER CURIAM

To put the issue raised in this appeal as if it were a law school exam, we are required to consider the consequences of the following:

> A owns all the outstanding stock of DEF and GHI; her husband, B, operates all these and other entities wholly-owned by A. XYZ has done work for some of A and B's entities over the course of many years.
>
> One of XYZ's principals asked B for a loan. B agreed, and A transferred $499,000 to DEF, a moribund entity. DEF then transferred $500,000 to XYZ, which executed a promissory note in DEF's favor; this note became DEF's only asset and its only debt is its unspoken obligation to repay A.
>
> XYZ continued to perform work for GHI, and the note's due date was repeatedly extended; meanwhile, GHI's indebtedness to XYZ rose to approximately $1,000,000. Consequently, DEF executed a release of the note in exchange for XYZ's forgiveness of GHI's debt.
>
> Was DEF's release of the note a fraudulent conveyance?

For the following reasons, we answer "no" to this question and reverse the judgment under review.

The appeal concerns two separate lawsuits filed in the wake of bankruptcy proceedings commenced by Carole Salkind, the owner of all outstanding stock of Motorworld, Inc., and many other entities,[1] including Fox Development Co. (Fox) and Giant Associates, Inc. (Giant). The first lawsuit was filed on July 6, 2011, by Catherine E. Youngman, Esq., the duly-appointed Chapter 7 Trustee for Carole Salkind; the action was commenced in Motorworld's name. Not long thereafter, another complaint was filed by Youngman in her own name and in her position as Trustee for Carole Salkind. Both actions sought relief against William Benkendorf, Gudrun Benkendorf, and Benks Land Services, Inc. (Benks).

The first action sought to collect on a $600,000 promissory note executed by William and Gundrun Benkendorf that Benks guaranteed. During discovery, defendants provided a copy of a release of this obligation, executed by Morton Salkind, Carole's husband, on Motorworld's behalf. Youngman then filed the second action against the Benkendorf defendants, claiming the release

[1] The judge determined that Carole wholly owned — and her husband operated — nineteen such entities.

constituted a fraudulent transfer. These two actions were consolidated in the trial court.

After a bench trial on January 6 and 7, 2014, the judge rendered his findings and concluded the release was a fraudulent conveyance because the Benkendorf defendants did not give reasonably equivalent value in consideration; consequently, the judge held that Motorworld was entitled to a judgment on the note. The Benkendorf defendants then moved for a determination that the doctrine of estoppel precluded the claim; Motorworld cross-moved for reconsideration of the judge's finding that, in executing the release, Morton Salkind possessed the legal authority to bind Motorworld. The judge denied these cross-motions and entered judgment against the Benkendorf defendants, jointly and severally, in the amount of $1,410,745.51.

In appealing, the Benkendorf defendants argue: (1) the release of the note was not a constructive fraudulent transfer because, among other things, they gave reasonably equivalent value; (2) the claims should have been precluded by the doctrine of estoppel; (3) even if they could be held liable, the judge should not have awarded such a substantial amount of penalties and interest; and (4) the claim was time-barred. Youngman and Motorworld cross-appealed, arguing that the judge erred by

holding that Morton Salkind was authorized to release the promissory note.

Most of the relevant facts were not in dispute. The judge described in his oral decision that Morton Salkind had engaged in real estate development for many decades in northern New Jersey and conducted these affairs through numerous business entities. According to the judge's findings, after a serious illness in 1988, Morton "determined that he would no longer actively own the companies through which he conducted his projects," that Carole "would be the 100 percent shareholder in any corporate entity . . . established to carry out his business affairs," and that he would "remain[] in control." The judge found that Morton "had complete authority . . . from his wife Carole . . . to carry out the affairs of the various entities that were engaged in business." As he explained, Morton "remained in control" to the extent that "one would believe one was doing business with" Morton rather than Carole or the entities.

The judge also determined that Morton Salkind and William Benkendorf "had a long-term business relationship . . . over the course of nearly 40 years." Benks, over the course of many years, performed landscape construction work on many Salkind

projects,[2] including work for Fox and Giant between 2004 and 2008 that "had a value in excess of five million dollars." The judge also found that, by 2008, Benks "was owed by one or the other of the companies operated by [Morton] and owned by [Carole] . . . in excess of one million dollars."

The judge found that, in 2004, Benks encountered problems regarding federal payroll tax obligations and sought a loan; at the time, as mentioned above, Benks was performing work for Salkind entities and was due in excess of one million dollars. Morton agreed to make the loan, which was memorialized by a $600,000 promissory note executed by William and Gudrun Benkendorf and guaranteed by Benks; Motorworld was designated as the lender. The judge found that

> Motorworld was established for the purpose of establishing, promoting, operating stockcar racing at the Meadowlands Sports Complex. . . . That project, however, which predated the loan, was unsuccessful. And [Morton] described Motorworld as not being an active corporation by 2004, although he claimed in his testimony that it owned certain intellectual property, but that did not include any trademarks, copyrights, or other traditional forms of intellectual property[, and that] what he was describing was certain knowhow in terms of establishing and operating a stockcar racetrack. But there was no value ever placed on any of that.

[2] According to the judge, Benks performed approximately $10,000,000 worth of work for Salkind entities.

In his findings, the judge recognized that the real source of the loan proceeds was not the moribund Motorworld. The banking records admitted in evidence support the judge's finding that, on December 21, 2004, Carole transferred $499,000 from a personal account to Motorworld's checking account[3]; a copy of a check from Motorworld (executed by Morton) dated December 17, 2004, conveyed $500,000 to William C. Benkendorf. The original promissory note, which required repayment of $600,000,[4] bears the same date as the check. Other than the so-called intellectual property referred to earlier, Motorworld's only asset was this note. The due date on the note was extended on a number of occasions; the last amended note called for payment by March 1, 2009.

The judge recognized the differences in the testimony concerning the relationship between the note and the money due Benks from Fox and Giant. Benkendorf testified "it was his purpose to pay the loan once he was paid the monies due him from [Fox and Giant] [a]nd he did tell [Morton] that he expected there to be a setoff," whereas Morton testified he "repeatedly

[3] Motorworld's tax return treated this transaction as a loan from Carole.

[4] The judge found there was no evidence to explain why the note required repayment of $600,000 when only $500,000 was lent.

rejected Mr. Benkendorf's requests for a setoff to straighten the accounts out."

In any event, Motorworld executed a release on August 8, 2008, declaring that

> in payment of the Promissory Note, Benks Land . . . has performed site work services which were provided with regard to the Rockaway Town Hall project, and has provided various construction and maintenance services, on Buildings 15 & 16.
>
> Based upon all of the above services, the Note has been satisfied and is at this point Paid in Full.

Although the parties disputed whether Morton actually signed this document, the judge found "highly credible" the testimony of the notary who witnessed its execution; he concluded from this evidence that Morton signed the release.

The only other critical factual dispute was whether Benks performed the work for which it had not been compensated by the time the release was executed. Although the Benkendorf defendants were burdened in their attempt to prove the outstanding indebtedness by a fire in a trailer that housed company records, the judge found Benks performed work for Fox and Giant valued "in the approximate amount of a million dollars."

Having made those findings, which we conclude are based on evidence in the record and are, therefore, entitled to our

deference, Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011); Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974), the judge turned to procedural barriers such as lack of standing and the statute of limitations asserted by the Benkendorf defendants – that were rejected – and then the legal question we posed at the outset of this opinion. The judge concluded that Motorworld's release of the note was not supported by an exchange of consideration because the benefit was given only "to other corporate entities, which . . . remain[] separate and distinct" from Motorworld. The judge rejected the argument that the release was obtained with the actual intent to hinder, delay or defraud a creditor but concluded – because Motorworld received no consideration for its surrender of its only asset – that the release constituted a constructive fraudulent conveyance forbidden by N.J.S.A. 25:2-27(a).

In later cross-motions, the trial judge amplified his earlier rejection of the Benkendorf defendants' estoppel argument, and he denied without additional comment the request that he reconsider his finding that Morton had authority to execute the release.

Judgment was entered on April 11, 2014, in favor of both Motorworld and the Trustee, and against the Benkendorf

defendants, jointly and severally, in the amount of $1,410,745.51.

The Benkendorf defendants appeal, arguing:

> I. THE CANCELLATION OF THE PROMISSORY NOTE WAS NOT A CONSTRUCTIVE FRAUDULENT TRANSFER PURSUANT TO N.J.S.A. 25:2-27(a).
>
> > A. Rendering $1,000,000 In Landscaping Services Was Equivalent Value For Cancellation Of The Note.
> >
> > B. The Cancellation Of The Note Was Beneficial To The Salkinds.
> >
> > C. The Salkinds Use Of Various Corporations For Their Own Business Purposes Does Not Impact The Equivalent Value They Received.
> >
> > D. The Salkinds Received Equivalent Value.
>
> II. THE TRUSTEE'S CLAIMS ARE PRECLUDED BY THE DOCTRINE OF ESTOPPEL.
>
> III. SUBSTANTIAL INTEREST AND PENALTIES SHOULD NOT HAVE BEEN AWARDED.
>
> > A. The Amount Of The Judgment Should Not Include Interest And Penalties Because The Damages Are Limited To The Amount Of The Alleged Fraudulent Transfer.
> >
> > B. The Inclusion Of Interest And Penalties After The Note Was Cancelled Is Inequitable.
>
> IV. THE TRUSTEE'S FRAUDULENT TRANSFER CLAIM IS BARRED BY THE STATUTE OF LIMITATIONS.

Youngman argues in her cross-appeal that:

THE TRIAL COURT ERRED WHEN IT HELD THAT MORTON SALKIND WAS AUTHORIZED TO RELEASE THE SOLE ASSET OF MOTORWORLD.

Because we agree that the release cannot be held to be a fraudulent transfer, we need not consider the arguments posed in the Benkendorf defendants' Points II, III and IV. We find insufficient merit in the cross-appeal of Motorworld and the Trustee to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

We start by recognizing that, absent fraudulent conduct, the Benkendorf defendants ceased being liable on the note itself when Motorworld voluntarily released them regardless of whether there was an exchange of consideration. See N.J.S.A. 12A:3-604(a) (declaring that "[a] person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument by an intentional voluntary act"). Accordingly, even if it could be said the Benkendorf defendants gave up nothing in exchange for the release of the note, Motorworld remained legally free to relinquish its right to enforce the note.

With that understanding, we examine what the judge said transpired through an analysis of the fraudulent transfer statutes. The judge rejected the contention that the exchange of rights and liabilities was a product of actual fraud or

fraudulent conveyance, N.J.S.A. 25:2-25, leaving only the question of whether the release of the parties' competing claims constituted a constructive fraud. In examining that question, it is important to focus on the language employed by N.J.S.A. 25:2-27(a), which provides that

> a transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

In applying the terms of this statute to what occurred here, we start by recognizing that "the debtor" referred to in the statute is Motorworld, and the only conceivable "creditor" would be Carole, assuming Motorworld was obligated to repay her $499,000[5]; no other creditors of Motorworld were identified, so we assume there are no others. The judge's findings require that we assume Motorworld was an empty shell and was used as a conduit for the loan transaction.

Having identified the players, we must then consider whether the debtor received "reasonably equivalent value in

[5] No such finding was made regarding Motorworld's obligation to repay Carole, but we will assume for present purposes that Carole and Motorworld so agreed.

exchange for the transfer," i.e., did Motorworld receive a benefit of reasonably equivalent value in exchange for releasing the note? The answer to that is clearly no. As we said in Flood v. Caro Corp., 272 N.J. Super. 398, 406 (App. Div. 1994), the value given "must be received by and for the benefit of the debtor-transfer[]or and not some other person or entity." Motorworld received no benefit by releasing its only asset. See also Nat'l Westminster Bank NJ v. Anders Eng'g, Inc., 289 N.J. Super. 602, 605 (App. Div. 1996). This is the analysis advocated by the Trustee and is essentially what the trial judge adopted. And while it has a certain formulaic appeal, it ignores one critical fact — the debtor may have received no value for the transfer, but its only creditor, the party for whose benefit the court is empowered to set aside the conveyance, received a reasonably equivalent value. That fact is what makes this case different from our prior experiences with this statute. Instead of being constructively defrauded by a debtor's release or conveyance of assets, the creditor actually benefited. N.J.S.A. 25:2-27(a) exists to prevent fraud on creditors, see Mellon Bank, N.A. v. Metro Commc'ns, Inc., 945 F.2d 635, 646 (3d Cir. 1991) (recognizing that fraudulent conveyance laws "are intended to protect the debtor's creditors"), cert. denied, 503 U.S. 937, 112 S. Ct. 1476, 117 L. Ed. 2d 620 (1992), not to allow a

creditor to benefit from the debtor's conveyance to the extreme detriment of the recipient of the conveyance.

The record demonstrates that the original loan transaction was crafted by Morton in a manner that suited him and his wife. The record contains no evidence to suggest the Benkendorf defendants had any interest or preference in the source of the funds. And when the parties discussed how to deal with the fact that the Benkendorf defendants owed $600,000 to the Salkinds or their entities, and two of the Salkind entities owed the Benkendorf defendants the significantly greater sum of $1,000,000, the Salkinds benefited from the agreement that the parties would forgive all these debts. Carole, as Motorworld's only creditor, was not defrauded; she benefited from the fact that another two of her solely-owned entities were absolved of a far greater debt.

As we have demonstrated, a literal interpretation and application of N.J.S.A. 25:2-27(a) precludes the relief granted by the trial judge. Moreover, upholding the judgment in question requires indifference to what actually occurred – that, far from being taken advantage of, the Salkinds greatly benefited from the so-called fraudulent conveyance. When he testified, Morton described the transaction in the following way:

> Q. As of June 2008, companies that [Carole] owned owed Mr. Benkendorf more than $1 million.
>
> A. That's correct.
>
> Q. Subsequently, you signed a document that wiped out the note to Motorworld. Is that correct?
>
> A. That's correct.
>
> Q. That eliminated Carole Salkind's other company's obligation to pay Mr. Benkendorf.
>
> A. That's correct.
>
> Q. So, Giant and Fox no longer owed Mr. Benkendorf more than $1 million.
>
> A. That's correct.
>
> Q. And he no longer owed the amount to Motorworld on the note.
>
> A. It was basically a two-for-one deal.
>
> Q. Two for one in whose favor?
>
> A. In the favor of me.
>
> . . . .
>
> A. It was basically a two-for-one deal. That's the way I thought of it and I understood it. I liked it since it was two to one in my favor, but you know, I didn't consider it a big deal if you want to know the truth.

Benkendorf also testified he felt at the time that he got the short end of the stick. Looking at the transaction from the Benkendorf defendants' point of view, the judgment under review

compounded the already disadvantageous agreement beyond all reason.

In the final analysis, the fraudulent conveyance statutes are designed to prevent fraud. Nothing fraudulent occurred here. To be sure, Motorworld released a claim in exchange for the Benkendorf defendants' release of a greater claim against another Salkind entity. But Carole, the sole shareholder and only creditor of Motorworld obtained a benefit by way of the transaction in question because other entities she also wholly-owned obtained a far greater benefit than what was released. Consequently, no creditor was defrauded either actually, constructively, or theoretically.

The judgment under review is reversed and the matter remanded for entry of an order dismissing the consolidated actions.