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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0178-15T2

5 PERRY STREET, LLC,

Plaintiff-Respondent,

v.

SOUTHWIND PROPERTIES, LLC,
a/k/a SOUTHWIND PROPERTY, LLC,
and DEBORAH LONGSTREET a/k/a
DEBORAH WATSON a/k/a DEBORAH
WATSON LONGSTREET,

Defendants-Appellants.

Argued November 9, 2016 — Decided June 27, 2017

Before Judges Ostrer and Leone.

On appeal from the Superior Court of New
Jersey, Chancery Division, Cape May County,
Docket No. C-21-15.

Peter A. Ouda, attorney for appellants.

Christopher Gillin-Schwartz argued the cause
for respondent (Barry, Corrado & Grassi, P.C.,
attorneys; Mr. Gillin-Schwartz, on the brief).

PER CURIAM

Defendants Southwind Properties, L.L.C. (Southwind) and
Deborah Longstreet appeal from the Chancery Division's July 24,

2015 order voiding, as a fraudulent transfer, an April 29, 2015 deed of conveyance of real property located at 5 Perry Street in Cape May (the Property) from Southwind to Longstreet. The case arises out of Southwind's default on two mortgages that encumbered the Property. Following the entry of two judgments of foreclosure, Southwind conveyed the Property to Longstreet, Southwind's only member, on the eve of a Sheriff's sale. Plaintiff 5 Perry Street, LLC (Perry) was the successful bidder at the Sheriff's Sale. The order also declared that Perry obtained good title. We affirm.

The pertinent facts are undisputed. Southwind operated a bed and breakfast at the Property. Two non-institutional lenders held mortgages on the property. Katie Morris Regan held a first mortgage, executed on October 1, 1999, with an initial principal amount of \$247,000, maturing on January 1, 2011.¹ Donald Katz held a second mortgage, executed on June 30, 2004, with an initial principal amount of \$11,600 and a maturity date of June 30, 2005. Pursuant to the judgments of foreclosure entered in August and September 2014, the court ordered payment of \$221,166.61 to the first mortgagee and \$25,443.53 to the second mortgagee.

In 2015, Southwind obtained four adjournments of scheduled Sheriff's sales. A sale was ultimately scheduled for April 29,

¹ The mortgage note required a balloon payment at maturity, but payments were based on a thirty-year payment schedule.

2015. In the meantime, Longstreet attempted to refinance the Property, which she estimated had a market value exceeding \$1.4 million. However, she was unable to consummate a transaction before April 29.

Instead, Longstreet filed a personal Chapter 13 bankruptcy petition on April 28, 2015.² She later admitted that she did so "in an effort to save valuable properties from being foreclosed." She also executed a deed transferring the Property from Southwind to her. The consideration stated was \$1 and "Balance of outstanding mortgage \$80,000.00."³ She filed the deed the next day, an hour and a half before the Sheriff's sale. She claimed her attorney notified the Sheriff's Office and first mortgagee of the deed, but Perry disputed her contention, which was unsupported by the attorney's certification. The Sheriff's sale proceeded as scheduled, and Perry prevailed in the auction with a \$485,000 bid.

² The schedules attached to her petition listed the mortgage debt to the two mortgagees as creditors holding secured claims, and stated the Property's value as \$1,486,100.

³ The \$1 consideration was typed into the deed. Longstreet stated that she wrote in the words, "Balance of outstanding mortgage \$80,000.00." She claimed that by doing so, she intended to assume personal liability under the mortgages, although the total due, as noted, was close to \$250,000. Notably, the Seller's Residency Certification/Exemption that she signed indicated the only consideration was \$1.

Perry paid a twenty percent deposit, then paid the balance on May 20, 2015, and received the Sheriff's deed for the Property.

Thereafter, Longstreet filed a motion in Bankruptcy Court to void the Sheriff's sale, which the court denied. The Bankruptcy Court later vacated the automatic stay, to permit Perry to proceed with a quiet title action in Superior Court.

Perry's verified complaint to quiet title followed. The court entered Perry's proposed order to show cause, directing Southwind and Longstreet to answer Perry's complaint and to show cause why a judgment should not be entered voiding the April 29 deed, and declaring that defendants had no remaining interest in the Property and that Perry had good and valid title. Perry sought resolution in a summary proceeding.⁴

In her written opposition, Longstreet discussed her efforts to negotiate a settlement with the first mortgagee and to obtain separate financing of her debts. She described her personal and financial difficulties, noting that Southwind's charter was revoked for failure to file annual reports, and that she operated the LLC as if it were a sole proprietorship (although, notably, she never assumed personal liability for Southwind's debts). She admitted that Southwind not only defaulted on its mortgage

⁴ The record does not include a formal motion seeking resolution in a summary manner. See R. 4:67-1.

payments, but also failed to pay taxes on the Property. She claimed that Southwind's transfer of the property to her personally, on the eve of the Sheriff's sale, was necessary "to rehabilitate the LLC and satisfy the outstanding mortgages." She contended that the deed reflected that she was assuming payment for the outstanding mortgages, although the \$80,000 noted in the deed was far less than the judgments. She asserted that she obtained a firm financing commitment in June 2015 for \$650,000, which would enable her to satisfy all secured claims against the Property. Defendants also challenged Perry's standing to seek the relief identified in its complaint.

At oral argument, Perry's counsel contended that the transfer from Southwind to Longstreet should be voided because it was fraudulent, claiming that various badges of fraud were demonstrated. Defendants' counsel admitted there were no disputed facts, but contended that Perry had failed to establish by clear and convincing evidence an actual intent to defraud. He contended that the transfer was motivated by Longstreet's intent to rehabilitate the debtor.

The judge reviewed the facts set forth above.⁵ He concluded that the Property's transfer "smacks of fraud [to] such a degree as warrants summary disposition." The judge concluded the conveyance was intended to secure the protection of the bankruptcy stay and delay the Sheriff's sale. He rejected Longstreet's claim that she assumed Southwind's debt, noting that the conveyance was not made with the mortgagees' notice or consent, and that the conveyance was an act of default as to each mortgagee. The judge stayed his July 24, 2015, order for thirty days, after which it went into effect. In the two months that followed, the Sheriff executed a writ of possession and evicted defendants from the Property.

Defendants' appeal followed. They present two arguments. They contend Perry lacked standing to seek the relief the court granted. They also contend that there existed a genuine factual dispute as to whether Longstreet had the actual intent to defraud creditors or future purchasers of the Property.

Defendants' arguments lack merit and warrant only brief discussion. R. 2:11-3(e)(1)(E). Perry obtained standing to challenge the Southwind-to-Longstreet transfer based on its

⁵ He also referred to the numerous adjournments that he granted and his efforts to impress upon Longstreet, who sometimes represented herself, about where she stood procedurally.

successful bid at the Sheriff's sale, its subsequent payment of the purchase price, and its receipt of the Sheriff's deed. As a matter of equity, Perry stands in the shoes of the judgment creditors for the purpose of challenging the transfer. See Fid. Union Tr. Co. v. Union Cemetery Ass'n, 134 N.J. Eq. 539, 541 (E. & A. 1944) (stating, "it is a settled rule that purchasers at [a Sheriff's sale], if not already parties to the suit, are regarded to a certain extent as parties to it, to be under the control of the court on the one hand, and its protection on the other."). Also, in view of defendants' counsel's concession that there were no disputed facts, we discern no error in the court proceeding in a summary manner. See United Jersey Bank v. Vajda, 299 N.J. Super. 161, 164 (App. Div. 1997).

The undisputed facts established that Longstreet had both constructive and actual intent to defraud her judgment creditors. Southwind was presumed insolvent because it was not paying its mortgage obligations or taxes. See N.J.S.A. 25:2-23(b). Moreover, Southwind's transfer of its only significant asset to an "insider," Longstreet, see N.J.S.A. 25:2-22, for consideration that was far less than the Property's value, rendered it insolvent as its debts exceeded its assets, see N.J.S.A. 25:2-23(a), and left it with assets that were unreasonably small for its lodging business. See N.J.S.A. 25:2-25(b)(1).

In view of these facts, the transfer was fraudulent on several grounds. First, the transfer was fraudulent as to present creditors under N.J.S.A. 25:2-27(a), because Southwind, as 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 . . . became insolvent as a result of the transfer" The transfer was also fraudulent under N.J.S.A. 25:2-25(b)(1), because "the debtor made the transfer . . . [w]ithout receiving a reasonably equivalent value in exchange for the transfer . . . and the debtor . . . [w]as engaged . . . in a business . . . for which the remaining assets of the debtor were unreasonably small in relation to the business"

Finally, the transfer was fraudulent under N.J.S.A. 25:2-25(a) because "the debtor made the transfer . . . [w]ith the actual intent to hinder, delay, or defraud any creditor of the debtor" Actual intent was established by the fact that "[t]he transfer . . . was to an insider," N.J.S.A. 25:2-26(a); the transfer was made after suit and entry of judgment, see N.J.S.A. 25:2-26(d); "[t]he transfer was of substantially all the debtor's assets," N.J.S.A. 25:2-26(e); the consideration was far less than the value of the transferred asset, see N.J.S.A. 25:2-26(h); and Southwind was insolvent or became insolvent after the transfer. See N.J.S.A. 25:2-26(i).

Longstreet's contention that she intended (eventually) to make her creditors whole is of no moment. She admitted the transfer was intended to foil the Sheriff's sale. She put the Property out of reach of her creditors, at least until she was able to secure refinancing and unilaterally decided to make good on the debts of the denuded LLC. Yet, the Uniform Fraudulent Transfer Act is intended to prevent just that kind of maneuver. See Gilchinsky v. Nat'l Westminster Bank N.J., 159 N.J. 463, 475 (1999) (noting that the statute is designed to prevent a debtor from "cheat[ing] a creditor by removing his property from the jaws of execution." (internal quotation marks and citation omitted)).

In any event, the transfer of the property from Southwind to Longstreet was void because of the preexisting lien of the foreclosure judgments:

A sheriff's sale in enforcement of that lien and the deed delivered pursuant thereto will vest in the purchaser at the sheriff's sale, despite the conveyances of the properties since the judgment was entered,

. . . as good and perfect an estate to the premises therein described as the execution debtor was seized of or entitled to at or before the judgment for the enforcement of which the execution issued, as fully to all intents and purposes as if the execution defendant had sold such real estate to such purchaser, and had received the consideration


money and signed, sealed and
delivered a deed for the same.

[Furnival Mach. Co. v. King, 142 N.J. Super.
251, 258 (App. Div. 1976).]

Here, both Regan and Katz obtained foreclosure judgments
almost seven months before Southwind's transfer to Longstreet.
Therefore, the trial court properly found the April 28 deed void
and that Perry had good and valid title.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION