VERA J. WOLFE,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 04-00,517
	:	
ROSE M. MOON, ELEANOR KLINGER, and CRAIG P. WINKLEMAN and MARTHA R. WINKLEMAN,	:	
	:	
Defendants	:	PETITION TO SET ASIDE *LIS PENDENS*

Date: November 23, 2004

OPINION and ORDER

Before the Court for determination is the Petition to Set Aside *Lis Pendens* of Defendants Craig and Martha Winkleman (hereafter "Winklemans") filed August 11, 2004. Plaintiff Vera J. Wolfe (hereafter "Wolfe") filed a Response to Petition to Set Aside *Lis Pendens* on September 1, 2004. The Court will deny the Petition.

The above-captioned matter was instituted by the filing of a Praecipe for Writ of Summons on March 29, 2004. On the same date, a *lis pendens* was indexed against the property owned by Winklemans on March 29, 2004. A complaint was filed on August 25, 2004 alleging a fraudulent transfer cause of action against the above named Defendants.

The Complaint has alleged the following facts. Defendants Eleanor Klinger and Rose Moon had operated a personal care home for the elderly known as Garden View Associates. Wolfe was an employee of Garden View Associates. Wolfe suffered an on-the-job back injury during the course of this employment. Wolfe filed a Worker's Compensation claim against Garden View Associates, Klinger and Moon. On October 7, 2002, a workers' compensation judge awarded Wolfe wage loss benefits in the amount of $281.52 per week and

directed Garden View Associates to pay Wolfe's necessary and reasonable medical expenses causally related to the work injury. The workers' compensation judge further determined that Garden View Associates' insurance carriers did not insure it for worker's compensation purposes on the date of the injury and consequently had no liability as to payment of Wolfe's workers' compensation benefits. Garden View Associates failed to pay the required workers' compensation benefits and Plaintiff obtained a judgment that was entered against Klinger and Moon, t/a Garden View Associates, in the amount of $42,382.55 plus $281.52 per week and unpaid interest on October 17, 2002.

The basis of Wolfe's fraudulent transfer claim concerns the transfer of the residence located at 2183 Lycoming Creek Road, Williamsport, Pennsylvania in which the personal care home was operated . The Complaint further alleges: the property was transferred to Klinger and Moon, t/a Garden View Associates, by deed dated November 5, 1986; on April 12, 2001, Klinger and Moon dissolved their partnership in Garden View Associates and transferred title to the property by deed to Klinger; on April 15, 2002, Klinger transferred the property to Defendants Winklemans by deed; this was a conveyance from parent to child; and, that Winklemans knew of the pending workers' compensation claim at the time they received the property from Klinger. Wolfe alleges the Klinger to Winkleman transfer was for less then adequate consideration, and that it, as well as the earlier transfers of the property, was an attempt to frustrate the enforcement of the judgment against Klinger and Moon, t/a Garden View Associates.

Winklemans assert that the *lis pendens* should be removed because it is a harsh imposition and its removal does not prejudice Wolfe. Winklemans make this assertion on the

basis that they have a complete defense to Wolfe's fraudulent transfer claim. Winklemans assert that they are good faith purchasers for value. Winklemans contend that they purchased the property for adequate consideration and without the knowledge that there was a judgment against Klinger and Moon, t/a Garden View Associates.

In addition, Winklemans argue that the *lis pendens* should be removed because it is a nullity per ***Psaki v. Ferra***, 546 A.2d 1127 (Pa. Super. 1988), *app. denied*, 559 A.2d 39 (Pa. 1989). Winklemans argue ***Psaki*** stands for the proposition that "… an attempt to index a *Lis Pendens* against real estate owned by a third party who had obtained property from the judgment creditor was a nullity and subject to cancellation where the Grantee was not the judgment debtor or a party of the proceedings in which the default judgment had been entered against the Grantor." Winklemans' Letter in Support of Petition to Set Aside *Lis Pendens*, 2. Winklemans argue that they were not parties to the original lawsuit in which the judgment was entered, and therefore, a *lis pendens* being indexed against their property is inappropriate.

" '[*L*]*is pendens* is based in common law and equity jurisprudence, rather than in statute, and is wholly subject to equitable principles.'" ***Rosen v. Rittenhouse Towers***, 482 A.2d 1113, 1116 (Pa. Super. 1984) (quoting ***Dorsh v. Jenkins***, 365 A.2d 861, 863-64 (Pa. Super. 1976)) (change in original). A *lis pendens* does not establish a lien upon the property affected nor does it have "… any application between the parties to the action themselves; all that it does is to give notice to third persons that any interest they may acquire in the [property] pending the litigation will be subject to the result of the action." ***Dice v. Bender***, 117 A.2d 725, 726-27 (Pa. 1955). "*Lis pendens* has no application except in cases involving the adjudication

of rights in specific property." ***Psaki***, 546 A.2d at 1128. "Thus a party is not entitled to have his case indexed as *lis pendens* unless title to real estate is involved in litigation." ***Ibid***.

Contrary to Winklemans' argument, the present case is not governed by ***Psaki***. In ***Psaki***, the plaintiff had filed suit to recover unpaid loans. 546 A.2d at 1128. The plaintiff obtained a default judgment on July 25, 1985. ***Ibid***. Prior to the default judgment being entered, the defendant sold his property to a third party on March 5, 1985. Subsequent to the default judgment, the plaintiff caused a *lis pendens* to be indexed against the third party's property on October 30, 1985. ***Ibid***.

The Superior Court affirmed the trial court's determination that the *lis pendens* had been inappropriately indexed. The Superior Court stated that the *lis pendens* against the property owned by the third party was a nullity and subject to cancellation. ***Psaki***, 546 A.2d at 1128. This was because the property to which the *lis pendens* was indexed was not at any relevant time the subject of a suit to adjudicate rights relating to the property. ***Ibid***. As a policy matter, the Superior Court stated that it would be unfair to permit a person holding a judgment to place a cloud on title to property owned by another, even thought that individual was not the judgment debtor or even a party to the prior proceedings. ***Ibid***.

Unlike ***Psaki***, the case *sub judice* does involve interests in the property subject to the litigation. This case involves a fraudulent transfer cause of action, which implicates the property and the rights therein. The Pennsylvania Uniform Fraudulent Transfer Act (PUFTA), 12 Pa.C.S.A. §5101-5110, established circumstances when "… transfers or obligations incurred by a debtor may be deemed to be fraudulent." ***K-B Bldg., Co. v. Sheesley Constr., Inc.***, 833 A.2d 1132, 1135 (Pa. Super. 2003). "Once a creditor establishes the existence of a fraudulent

transfer, the creditor may, *inter alia*, avoid the transfer or obligation, attach the transferred assets or other property of the transferee, obtain an injunction barring further transfers, or seek appointment of a receiver over the transferred assets." ***Id***. at 1135-36 (citing 12 Pa.C.S.A. §5107(a)). If Wolfe prevails on her fraudulent transfer claim, then the transfer to Winklemans can be avoided. This certainly implicates an interest in the property, as it could terminate Winklemans' interest and result in the property being reconveyed.

Having initially determined that the *lis pendens* is appropriate in the sense that the interests in the property subject thereto are at issue in the pending litigation, the Court must still determine whether the *lis pendens* should be removed despite this. In determining whether a *lis pendens* should be removed, a court must balance the equities and determine whether "… the application of the doctrine is harsh or arbitrary and whether the cancellation of the *lis pendens* would result in prejudice to the non-petitioning party." ***Rosen***, 484 A.2d at 1116. The Court concludes that the *lis pendens* will not be removed.

The application of the doctrine is not harsh or arbitrary. The Court cannot say that Wolfe will not prevail on her fraudulent transfer claim. Wolfe has presented a colorable claim. Winklemans have also presented a colorable defense to the fraudulent transfer claim. The final determination of this matter will rest with the fact finder after it resolves matters of credibility and issues of fact. Therefore, the Court cannot say that it is harsh or arbitrary to have the *lis pendens* indexed against a property that may have been fraudulently transferred and subject to the remedies available under the PUFTA.

The cancellation of the *lis pendens* would result in prejudice to Wolfe. The prejudice comes in the form of the adverse effect upon the remedies available to Wolfe under

the PUFTA if she is successful on her fraudulent transfer claim. The *lis pendens* provides notice that the property may have been transferred to avoid payment of a debt. Such notice would likely defeat a claim of being a good faith transferee. This is important because good faith transferee status has an impact on the remedies available to a creditor under the PUFTA.

Per 12 Pa.C.S.A. §5108(b), if a transfer is voidable, then the creditor can recover a judgment for the amount of the value of the asset transferred or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against (1) the first transferee of the asset or the person for whose benefit the transfer was made or (2) any subsequent transferee other than a good faith transferee. 12 Pa.C.S.A. §5108(b)(1), (2). If the transfer of the property from Klinger to Winklemans is determined to have been fraudulent, then a judgment could be entered against Winklemans. Judgment could also be entered against the party to whom Winklemans sold the property, but only if the party was not a good faith transferee. Thus, if the *lis pendens* is in place a transferee likely could not claim good faith transferee status. Wolfe would want a judgment against an individual with assets to cover the judgment. In this case, that would be the individual who has the property. The *lis pendens* is a means of securing that result by preventing the subsequent transferee from claiming good faith transferee status.

If there was no *lis pendens* in place, then the judgment likely could not be entered against a subsequent transferee due to his good faith transferee status. In this scenario Wolfe would be left with a judgment against Winklemans. This could be a hallow victory because with the property transferred Winklemans may not have the assets to satisfy the judgment, especially since there is no guarantee that the proceeds from the sale would be sufficient or

available to satisfy the judgment. At the end of the day, Wolfe would be in the same position she was when she started the fraudulent transfer claim – holder of an unpaid debt. Therefore, removal of the *lis pendens* would result in prejudice to Wolfe.

Accordingly, the Petition to Set Aside *Lis Pendens* is denied.

O R D E R

It is hereby ORDERED that the Petition to Set Aside *Lis Pendens* of Defendants Craig and Martha Winkleman filed August 11, 2004 is DENIED.

BY THE COURT:

William S. Kieser, Judge

cc: Garth D. Everett, Esquire
Charles R. Rosamilia, Jr., Esquire
Judges
Christian J. Kalaus, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)