UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
(Eastern Division)

In re: STEVEN PALLADINO and LORI PALLADINO, ET AL[1] Debtor.	CHAPTER 7 CASE NO. 14-11482-MSH (Substantively Consolidated)
MARK G. DEGIACOMO, CHAPTER 7 TRUSTEE OF STEVEN AND LORI PALLADINO, Plaintiff v. SACRED HEART UNIVERSITY, INC., Defendant.	ADVERSARY PROCEEDING NO. 15-01126-MSH

MEMORANDUM OF LAW IN SUPPORT OF CHAPTER 7 TRUSTEE'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Mark G. DeGiacomo, the Chapter 7 trustee (the "Trustee") of the substantively consolidated bankruptcy estates of Steven and Lori Palladino (the "Debtors") and Viking Financial Group, Inc. (the "Corporation"), submits this Memorandum of Law in Support of his Motion for Summary Judgment against the Defendant, Sacred Heart University, Inc. ("Sacred Heart" or the "Defendant") on Counts I through IV of the Chapter 7 Trustee's Adversary Complaint (the "Adversary Complaint"). As set forth herein, there are no material facts in dispute and the Trustee is entitled to judgment as a matter of law. The Trustee, therefore, respectfully requests that this Court enter an Order granting his Motion for Summary Judgment

[1] The other Chapter 7 Case substantively consolidated with In re: Steven and Lori Palladino (Case No. 14-11482) is In re: Viking Financial Group, Inc. (Case No. 14-12116).

and enter judgment against the Defendant on Counts I through IV of the Adversary Complaint pursuant to §§ 544(b)(1), 548(a)(1)(A), 548(a)(1)(B) and 550 of the Bankruptcy Code and M.G.L. ch. 109A, §§ 5(a)(1), 5(a)(2), 8 and 9.

INTRODUCTION

On April 1, 2014, the Debtors filed a voluntary petition pursuant to Chapter 7 of the Bankruptcy Code (the "Petition Date"). On May 6, 2014, Viking Financial Group, Inc. (the "Corporation") filed a voluntary petition pursuant to Chapter 7 of the Bankruptcy Code. On May 20, 2014, the Court entered an Order substantively consolidating the bankruptcy estate of the Corporation with the bankruptcy estates of the Debtors. The Trustee is the duly-appointed Chapter 7 trustee for the Debtors' and Corporation's bankruptcy estates.

On July 1, 2015, the Trustee filed an Adversary Complaint with this Court against Sacred Heart, which seeks to avoid and recover certain payments made by the Debtors to Sacred Heart for their adult daughter's college education. The Adversary Complaint contains the following counts:

Count I: **Avoidance and Recovery of Fraudulent Transfers Under 11 U.S. C. §§ 548(a)(1)(A) and 550 – Actual Fraud**

Count II: **Avoidance and Recovery of Fraudulent Transfers Under U.S. C. §§ 548(a)(1)(B) and 550 – Constructive Fraud**

Count III: **Avoidance and Recovery of Fraudulent Transfers Under 11 U.S.C. §§ 544(b)(1) and 550 and M.G.L. ch. 109A, §§ 5(a)(1), 8 and 9 – Actual Fraud**

Count IV: **Avoidance and Recovery of Fraudulent Transfers Under 11 U.S.C. §§ 544(b)(1) and 550 and M.G.L. ch. 109A, §§ 5(a)(2), 8 and 9 – Constructive Fraud**

Summary judgment should enter in favor of the Trustee on Counts I and III of the Adversary Complaint because the Debtors' operation of a Ponzi scheme establishes as a matter

of law that the Debtors made the Transfers[2] with the actual intent to hinder, delay or defraud their creditors. Summary judgment should enter in favor of the Trustee on Counts II and IV of the Adversary Complaint because the Debtors were not legally obligated to fund their adult daughter's college education and the Debtors did not receive any value in exchange for the Transfers.

STATEMENT OF FACTS

Pursuant to Fed. R. Civ. P. 56 and United States District Court for the District of Massachusetts Local Rule 56.1, made applicable to this proceeding by Rule 7056 of the Federal Rules of Bankruptcy Procedure and MLBR 7056-1, the Trustee has set forth and incorporates by reference the undisputed material facts in support of his Motion for Summary Judgment in the Chapter 7 Trustee's Concise Statement of Undisputed Material Facts, filed herewith (the "Statement of Facts"). In further support of his Motion for Summary Judgment, the Trustee has filed herewith the Affidavit of Mark G. DeGiacomo (the "DeGiacomo Affidavit").

In summary, the undisputed material facts are that the Debtors are the parents of Nicole Palladino ("Nicole"). Statement of Facts, ¶ 6. Nicole was enrolled as a student at Sacred Heart beginning the fall of 2012. Statement of Facts, ¶ 7. Nicole was eighteen years old at the time of her enrollment at Sacred Heart. Statement of Facts, ¶ 8. Within the four-year period prior to the Petition Date, the Debtors transferred a total of $64,656.22 (the "Transfers") to Sacred Heart for Nicole's college education. Statement of Facts, ¶ 9. On January 21, 2014, the Debtors pled guilty to operating a multiyear, multimillion dollar Ponzi scheme through the Corporation (the "Ponzi Scheme"). Statement of Facts, ¶ 10. On April 18, 2014, the Securities and Exchange Commission obtained a final judgment against Steven Palladino and the Corporation in the

[2] Defined below.

amount of $9,701,738 for securities violations in connection with the operation of the Ponzi Scheme. Statement of Facts, ¶ 12.

INTRODUCTION

There is no dispute that the Debtors operated a Ponzi scheme. There is also no dispute that the Debtors made the Transfers to Sacred Heart within the four-year period preceding the Petition Date. The existence of the Ponzi Scheme establishes, as a matter of law, that the Debtors made the Transfers with the actual intent to hinder, delay or defraud their creditors. The Trustee, therefore, is entitled to judgment on Counts I and II of the Adversary Complaint.

Due to the existence of a Ponzi scheme, there is no dispute that the Debtors were insolvent. There is also no dispute that the Debtors did not receive any concrete or quantifiable economic value in exchange for the Transfers and that the Debtors did not extinguish any legal obligation in exchange for payment of their adult child's college education. Based on a plain meaning of the Bankruptcy Code's definition of "value," there can be no dispute that the Debtors did not receive any value in exchange for the Transfers. Since the Debtors did not receive any economic value in exchange for the Transfers, the Trustee is entitled to judgment on Counts II and IV of the Adversary Complaint.

The Trustee is, therefore, entitled to avoid and recover, as fraudulent transfers, the Transfers on both his actual and constructive fraud claims set forth in the Adversary Complaint.

SUMMARY JUDGMENT STANDARD

A motion for summary judgment in an adversary proceeding is governed by the same standards which govern motions under Fed. R. Civ. P. 56, as made applicable by Fed. R. Bankr. P. 7056. See McCrory v. Spigel (In re Spigel), 260 F.3d 27 (1st Cir. 2001); Braunstein v. Panagiotou (In re McCabe), 345 B.R. 1 (Bankr. D. Mass. 2006). "It is apodictic that summary judgment should be bestowed only when no genuine issue of material fact exists and the movant

has successfully demonstrated an entitlement to judgment as a matter of law." Desmond v. Varrasso (In re Varrasso), 37 F.3d 760, 763 (1st Cir. 1994) (citing Fed. R. Civ. P. 56(c)). A fact is material if it "might affect the outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). "Factual disputes that are irrelevant or unnecessary will not be counted." Id.

"Once the moving party has satisfied its burden, the burden shifts to the non-movant to set forth specific facts showing that there is a genuine, triable issue." In re McCabe, 345 B.R. at 5. In order to defeat a properly supported motion for summary judgment, the non-moving party must establish a trial-worthy issue by presenting "enough competent evidence to enable a finding favorable to the nonmoving party." Anderson, 477 U.S. at 249.

ARGUMENT

I. THE TRANSFERS ARE FRAUDULENT UNDER THE BANKRUPTCY CODE AND SUBJECT TO AVOIDANCE BY THE TRUSTEE.

A. The Transfers Were Fraudulent and May Be Avoided By The Trustee Under 11 U.S.C. § 548(a)(1)(A) of the Bankruptcy Code and Recovered under 11 U.S.C. § 550(a)(1).

Pursuant to Section 548(a)(1)(A) of the Bankruptcy Code, a trustee may avoid any transfer of a debtor's interest in property, made within the two years prior to the petition date, if such transfer was made "with actual intent to hinder, delay, or defraud" the debtor's creditors. 11 U.S.C. § 548(a)(1)(A).

There is no dispute that the Debtors were operating a Ponzi scheme through the Corporation that had no legitimate business purpose. Statement of Facts, ¶¶ 10, 12. The Debtors' operation of the Ponzi Scheme establishes, as a matter of law, that the Debtors made the Transfers with the actual intent to hinder, delay or defraud their creditors.

Courts have found that "the existence of a Ponzi scheme establishes that transfers were made with the intent to hinder, delay and defraud creditors." Picard v. Merkin (In re Bernard L. Madoff Inv. Sec. LLC), 440 B.R. 243, 255 (Bankr. S.D.N.Y. 2010) (internal citations omitted); McHale v. Boulder Capital LLC (In re The 1031 Tax Group), 439 B.R. 47, 71 (Bankr. S.D.N.Y 2010) ("[i]f the Ponzi scheme presumption applies, actual intent for the purposes of section 548(a)(1)(A) is established 'as a matter of law.'" (internal citations omitted); Bear, Stearns Sec. Corp. v. Gredd (In re Manhattan Inv. Fund Ltd.), 397 B.R. 1, 8 (S.D.N.Y. 2007 ("[T]ransfers made in the course of a Ponzi scheme could have been made for no purpose other than to hinder, delay or defraud creditors.") (internal quotations omitted); Barclay v. Mackenzie (In re AFI Holding, Inc.), 525 F.3d 700, 704 (9th Cir. 2008) (internal quotations and citations omitted) ("[T]he mere existence of a Ponzi scheme is sufficient to establish actual intent under §548(a)(1) or a state's equivalent to that section.").

Here, the Debtors pled guilty and were criminally convicted of fraud related charges in connection with their operation of the Ponzi Scheme (and Steven Palladino was found liable for securities violations in connection with his operation of the Ponzi Scheme). The Debtors' guilty pleas followed by criminal convictions are proof positive of the existence of the Ponzi Scheme. See In re Manhattan Inv. Fund Ltd., 397 B.R. at 12 (relying on transferor's criminal guilty plea to establish the existence of a Ponzi scheme); Santa Barbara Capital Mgmt. B. Neilson (In re Slatkin), 525 F.3d 805, 814 (9th Cir. 2008) ("a debtor's admission, through guilty pleas and a plea agreement admissible under the Federal Rules of Evidence, that he operated a Ponzi scheme with the actual intent to defraud his creditors conclusively establishes the debtor's fraudulent intent under §548(a)(1)(A) …").

Thus, the Trustee is entitled to avoid and recover the Transfers from Sacred Heart on his claim for actual fraud pursuant to Sections 548(a)(1)(A) and 550 of the Bankruptcy Code. Accordingly, the Trustee is entitled to judgment in his favor on Count I of the Adversary Complaint as a matter of law.

B. The Transfers Were Fraudulent and May Be Avoided By The Trustee Under 11 U.S.C. § 548(a)(1)(B) of the Bankruptcy Code and Recovered under 11 U.S.C. § 550(a)(1).

Section 548(a)(1)(B) of the Bankruptcy Code permits a trustee to avoid transfers that are "constructively fraudulent." Braunstein v. Leung (In re Leung), 2008 Bankr. LEXIS 2804, *15 (Bankr. D. Mass. Sept. 22, 2008). Under 11 U.S.C. § 548(a)(1)(B)(ii)(I), a transfer is constructively fraudulent if the debtor "received less than a reasonably equivalent value in exchange for such transfer" and "was insolvent on the date that such transfer was made . . . or became insolvent as a result of such transfer." 11 U.S.C. § 548(a)(1)(B).

Since the Debtors were engaged in a Ponzi scheme through the operation of the Corporation, there is no dispute that the Debtors were insolvent at the time of the Transfers.

In Cunningham v. Brown, 265 U.S. 1, 8 (1924), the Supreme Court found that a Ponzi scheme debtor is always insolvent and becomes more insolvent each day the business succeeds. Later courts have held that a Ponzi scheme is "as a matter of law, insolvent from its inception." See Warfield v. Byron, 436 F.3d 551, 558 (5th Cir. 2006); see also In re Carrozzzella & Richardson, 286 B.R. 480, 486, n.17 (D. Conn. 2002) ("[a] number of courts have held that an enterprise engaged in a Ponzi scheme is insolvent from its inception and becomes increasingly insolvent as the scheme progresses."); In re Taubman, 160 B.R. 964, 978 (Bankr. S.D. Ohio 1993) ("The promised rates of return, because they are in excess of any real investments, render a ponzi scheme operator insolvent from the inception of the scheme."); Cuthill v. Kime (In re Evergreen Sec., Ltd.), 319 B.R. 245, 253 (Bankr. M.D. Fla. 2003) (internal citations omitted)

("Insolvency of the debtor as required by § 548(a)(1)(B) is established, when the Debtor is operating a Ponzi scheme.").

The Debtors operation of the Ponzi Scheme establishes the Debtors insolvency as a matter of law. See In re Bernard L. Madoff Inv. Sec. LLC, 458 B.R. 87, 118 (Bankr. S.D.N.Y. 2011).

The only issue that remains under Section 548(a)(1)(B) of the Bankruptcy Code is whether the Debtors received reasonably equivalent value in exchange for the Transfers.

The Bankruptcy Code does not define "reasonably equivalent value." "Value," however, is defined in the Bankruptcy Code as "property, or satisfaction or securing a present or antecedent debt of the debtor, but does not include an unperformed promise to furnish support to the debtor or a relative of the debtor." 11 U.S.C. § 548(d)(2)(A). Value can be in the form of either a direct or indirect economic benefit to the debtor. See Wilkinson v. Wiley & Son (In re Wilkinson), 196 F. App'x 337, 342 (6th Cir. 2006) ("Value can be in the form of either a direct economic benefit or an indirect economic benefit.") (emphasis supplied); Zubrod v. Kelsey (In re Kelsey), 270 B.R. 776, 781 (9th Cir. BAP 2001) ("value is limited to economic or monetary consideration"); Walker v. Treadwell (In re Treadwell), 699 F.2d 1050, 1051 (11th Cir. 1982) (holding that "love and affection" in exchange for monetary transfers was not reasonably equivalent value); Henkel v. Green (In re Green), 268 B.R. 628, 651 (Bankr. M.D. Fla. 2001) (debtor's moral or family obligation to pay for their daughter's wedding is not reasonably equivalent value); see also 3 Alan N. Resnick & Henry J. Sommer, *Collier Bankruptcy Manual* ¶ 548.05[1][b] (Matthew Bender) ("In order to determine if fair economic exchange has occurred [to constitute reasonably equivalent value], the court must analyze all the circumstances surrounding the transfer in question.") (emphasis supplied).

Here, since Nicole was 18 years old and the age of majority at the time of her enrollment at Sacred Heart, the Debtors had no legal obligation to pay for her college education. See Mass. Gen Laws ch. 231, § 85P; Mass. Gen Laws ch. 119, §§ 21, 24.[3] Moreover, the Debtors did not receive any direct or indirect economic value in exchange for the payment of Nicole's college education. Therefore, the Debtors did not receive any "value" (as that term is defined in the Bankruptcy Code) in exchange for the Transfers.

The facts of this are akin to two recently decided bankruptcy court cases on the issue of whether reasonably equivalent value was given to debtor-parents in exchange for payments of their adult children's college tuition under Section 548(a)(1)(B) of the Bankruptcy Code.[4]

In Gold v. Marquette University (In re Leonard), 454 B.R. 444 (E.D. Mich. 2011), the Chapter 7 trustee sought to avoid and recover, as fraudulent transfers, tuition payments totaling more than $21,000 made by the debtor-parents to Marquette University for their 18-year-old son's education. Id. at 445-446. The trustee and the University filed cross-motions for summary judgment on the trustee's constructive fraudulent transfer claims. The issue hinged on the debtor-parents' receipt of "reasonably equivalent value" for the transfers. The University argued that the debtors received reasonably equivalent value for the tuition payments in the form of peace of mind in knowing that their son was receiving a good education and the expectation that their son would become financially independent as a result of his education. Id. at 454-455. In granting summary judgment in favor of the trustee, the court reasoned that any indirect benefit received by the debtors could only be considered "value" if it were an economic benefit that was "concrete" and "quantifiable." Id. at. 457. The court determined that the debtor-parents did not

[3] Although not relevant here, parents may be legally obligated to educate their adult children on account of a separation or divorce agreement under Massachusetts law.

[4] There are only four reported decisions on this issue, none of which are from this jurisdiction. There are no appellate decisions to date on this issue.

receive any value in exchange for the tuition payments because the intangible benefits of peace of mind and financial freedom were not "concrete and quantifiable." The court also held that the payment of college tuition did not satisfy any legal duty on the debtors' part (which may constitute equivalent value under the Bankruptcy Code) since the parents had no legal obligation to provide their adult child with a college education. Id.

Similarly, in Banner v. Lindsay (In re Lindsay), No. 06-36352 (CGM), 2010 WL 1780065 (Bankr. S.D.N.Y. May 4, 2010), the Chapter 7 trustee sought to avoid and recover, as fraudulent transfers, tuition payments totaling more than $35,000 made by the debtor-parents to a university for their adult son's education. On the trustee's motion for summary judgment, the court found in favor of the trustee. The court rendered its decision based on the facts that (1) the debtor-parents produced no evidence of a legal obligation to pay their son's tuition, "such as a promissory note in favor of the university or a lender," (2) no law existed obligating a parent to pay for an adult child's education, and (3) the debtors offered no authority to support their argument that they had a "moral obligation" to fund their adult child's education. Id. at *9.

The only other reported decisions on this issue are both from the Western District of Pennsylvania. Both decisions reach the wrong conclusion.

In Sikirica v. Cohen (In re Cohen), No. 05-38135 (JAD), 2012 WL 5360956 (Bankr. W.D. Pa. October 31, 2012), the Chapter 7 trustee challenged $102,573.00 in payments made by the debtors pre-petition for their son and daughter's post-secondary education. Id. at *9. While the court acknowledged that Pennsylvania law did not require parents to pay for their children's post-secondary education, the court held that payments were "reasonable and necessary for the maintenance of the Debtor's family for purposes of the fraudulent transfer statutes only," and thus the payments were unavoidable. Id. at *10.

In the other Pennsylvania case, Shearer v. Oberdick (In re Oberdick), 490 B.R. 687 (Bankr. W.D. Pa. 2013), the Chapter 7 trustee challenged $82,536.22 in payments made by the debtors pre-petition for their children's undergraduate education at the University of Chicago and Robert Morris University. In following the reasoning of the Cohen court, the court found that although the debtors did not have any legal obligation to pay for their children's undergraduate education, the payments "were made out of a reasonable sense of parental obligation" and that "there is something of a societal expectation that parents will assist with such expense if they are able to do so." Id. at 712.

Neither of these decisions discusses nor reference the definition of "value" set forth in Section 548 of the Bankruptcy Code (with respect to this issue) and neither find that the debtors received any economic value for the college tuition payments.[5] As a result, these cases represent a diversion from a plain meaning of the Bankruptcy Code and are fundamentally flawed as a matter of law.

Because the Debtors did not receive any "concrete" and "quantifiable" economic value in exchange for the Transfers and because the Debtors did not satisfy any legal obligation in exchange for the Transfers, the Debtors did not receive any value in exchange for the Transfers. Thus, the Trustee is entitled to avoid and recover the Transfers from Sacred Heart on his claim for constructive fraud pursuant to Sections 548(a)(1)(B) and 550 of the Bankruptcy Code. Accordingly, the Trustee is entitled to judgment in his favor on Count II of the Adversary Complaint as a matter of law.

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[5] Bankruptcy Courts have found that debtors received "reasonably equivalent value" in exchange for tuition payments for a minor child's education on the grounds that parents are legally obligated to educate their minor children. See, e.g., Geltzer v. Xaverian High School (In re Akanmu), 502 B.R. 124 (Bankr. E.D.N.Y. 2014); Karolak v. University Liggett School (In re Karolak), No. 12-61378, 2013 WL 4786861 (Bankr. E.D. Mich. Sept. 6, 2013).

II. THE TRANSFERS ARE FRAUDULENT UNDER THE MASSACHUSETTS UNIFORM FRAUDULENT TRANSFER ACT AND SUBJECT TO AVOIDANCE BY THE TRUSTEE.

Pursuant to 11 U.S.C. § 544(b), a Chapter 7 trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is avoidable under state law. See 11 U.S.C. § 544(b)(1). The fraudulent transfer provisions of Massachusetts General Laws ch. 109A (the "Uniform Fraudulent Transfer Act" or "UFTA") mirror the Bankruptcy Code fraudulent transfer provisions detailed above, except that the statute of limitations on fraudulent transfers under the UFTA is four years, as opposed to the two year limitations period under the Bankruptcy Code. See M.G.L.A. c. 109A, §10 (a) and (b).

Because one of the payments included in the Transfers was made more than two years prior to the Petition Date, [6] the Trustee must also seek judgment against Sacred Heart under the UFTA. However, the analysis is the same under the Bankruptcy Code and the UFTA as further detailed below.

A. The Transfers Were Fraudulent Under M.G.L. ch. 109A, §5(a)(1) and May Be Avoided by The Trustee Under M.G.L. ch. 109A, §§ 8 and 9.

Under M.G.L. ch. 109A, § 5(a)(1), a transfer made by a debtor is fraudulent if made "with actual intent to hinder, delay, or defraud any creditor of the debtor." M.G.L. ch. 109A, § 5(a)(1). Section 5(b) of the UFTA General Laws provides a nonexclusive list of factors that may be considered in determining whether the parties made the transfers with actual intent to hinder, delay, or defraud. See Alford v. Thibault, 83 Mass.App.Ct. 822, 828 (2013). "While the 'presence of a single badge of fraud may spur mere suspicion, the confluence of several can constitute conclusive evidence of an actual intent to defraud.' " Hasbro, Inc. v. Serafino, 37 F.Supp.2d 94, 98 (D.Mass.1999) (internal quotations omitted).

[6] This payment is a $1,500 payment made on March 21, 2012.

These factors include whether:

> (1) the transfer or obligation was to an insider;
>
> (2) the debtor retained possession or control of the property transferred after the transfer;
>
> (3) the transfer or obligation was disclosed or concealed;
>
> (4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
>
> (5) the transfer was of substantially all or all the debtor's assets;
>
> (6) the debtor absconded;
>
> (7) the debtor removed or concealed assets;
>
> (8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
>
> (9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
>
> (10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and
>
> (11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

M.G.L. ch. 109A, § 5(b)(1)-(11).

As discussed above, at least three of the factors set forth in Section 5(b) are present here. The value of the consideration received by the Debtors for the Transfers (i.e. no consideration) was not "reasonably equivalent to the value of the asset[s] transferred." And, on account of the Ponzi Scheme, the Debtors were insolvent at the time of the Transfers and the Transfers occurred "shortly before or shortly after a substantial debt was incurred." Therefore, the Transfers constitute fraudulent transfers under M.G.L. ch. 109A, § 5(a)(1).

Thus, the Trustee is entitled to avoid and recover the Transfers from Sacred Heart on his claim for actual fraud pursuant to Sections 5(a), 8 and 9 of the UFTA. Accordingly, the Trustee is entitled to judgment in his favor on Count III of the Adversary Complaint as a matter of law.

B. The Transfers Were Fraudulent Under M.G.L. ch. 109A, §5(a)(2) and May Be Avoided by The Trustee Under M.G.L. ch. 109A, §§ 8 and 9.

Under M.G.L. ch. 109A, § 5(a)(2), a transfer made by a debtor is fraudulent if made "without receiving a reasonably equivalent value in exchange for the transfer or obligation" while the debtor was insolvent. M.G.L. ch. 109A, § 5(a)(2)(i)-(ii). Like the Bankruptcy Code, the UFTA does not define "reasonably equivalent value." The definition of "value" under the UFTA is consistent with the definition of "value" under the Bankruptcy Code. "Value" is defined under the UFTA as follows: "[v]alue is given for a transfer … if, in exchange for the transfer … property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person." M.G.L. ch. 109A, § 4(a).

For the reasons set forth in Section I(B.) above, the Debtors did not receive reasonably equivalent value for the Transfers.

Thus, the Trustee is entitled to avoid and recover the Transfers from Sacred Heart on his claim for constructive fraud pursuant to Sections 5(a), 8 and 9 of the UFTA. Accordingly, the Trustee is entitled to judgment in his favor on Count IV of the Adversary Complaint as a matter of law.

CONCLUSION

The Trustee has met his burden of proof with respect to all of the elements he must prove under §§ 544, 548 and 550 of the Bankruptcy Code, and M.G.L. ch. 109A, and there are no genuine issues of material fact with respect to any of the elements. Therefore, the Trustee is entitled to judgment as a matter of law on Counts I, II, III and IV of the Adversary Complaint.

Respectfully submitted,

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By his attorneys,

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Dated: February 9, 2016