

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN**

Cite as: [Unpublished]

Dorothy L. Kane, Debtor
Bankruptcy Case No. 02-11588-13

United States Bankruptcy Court
W.D. Wisconsin, Madison Division

March 27, 2003

Jerome M. Ott, Jerome M. Ott, S.C., Mt. Horeb, WI for Debtor

Robert D. Martin, United States Bankruptcy Judge

MEMORANDUM DECISION

Badger State Bank ("Badger") has presented an elaborate objection to confirmation of the debtor, Dorothy Kane's, Chapter 13 plan. Badger claims to be a creditor of the Debtor by virtue of her having received a fraudulent transfer of property from Vogt's Ag-Tech West ("VATW") at a time when VATW was indebted to Badger. Badger has no other claims against the Debtor. If Badger were entitled to recover the transferred property from the Debtor, complicated issues arise as to whether the Debtor's Chapter 13 plan (which committed to pay the trustee less than the value of all property to which the Debtor's creditors might have access under Wisconsin marital property law) is in the creditors' best interest.

The Debtor's son in law, Ronald Vogt had been managing VATW, a store selling feed, chemicals, and fertilizer. VATW served as a satellite operation of Monroe Ag-Tech ("Monroe"). Each month, Monroe advanced operating funds to VATW, including an amount designated as Mr. Vogt's salary. Badger permitted VATW to pay Mr. Vogt from accounts in which Badger had a security interest. In early 2001, VATW began having financial difficulties. Monroe stopped advancing operating funds and Mr. Vogt stopped receiving his salary. By August, 2001, VATW was insolvent and owed Mr. Vogt a substantial amount in unpaid salary. On August 31, 2001, VATW closed its doors to the public. VATW surrendered its assets to Badger. However, the assets were insufficient to satisfy VATW's debt.

Between August 29 and September 10, 2001, Mr. Vogt issued three checks, drawn on VATW's account, to the Debtor to repay money that she lent him. The checks totaled \$29,000.00. Although the parties have not stated the exact amount of salary owed to Mr. Vogt, they agree that it was more than \$29,000.00.

In January 2002, Badger sued the Debtor in Dane County Court to recover the transfers as fraudulent under state law. Unable to bear the costs associated with defending herself, the Debtor filed her Chapter 13 petition. Her schedules do not include assets under her husband's exclusive control.

The Debtor denies that a fraudulent transfer occurred and that Badger has a claim against her estate. She further argues that neither she nor her creditors have any rights to property under her husband's exclusive control pursuant to a marital property agreement that she and her husband signed in 1995. Badger claims that the marital property agreement is too vague to be enforced.

A transfer is fraudulent as to a creditor if the transfer is made for less than reasonably equivalent value and the transferor was insolvent at the time of the transfer.¹ VATW accounts were the source of the \$29,000.00 paid to the Debtor. VATW was then insolvent. The Debtor gave VATW nothing of value in exchange for the payment. However, Mr. Vogt had provided services to VATW which had previously been valued in excess of the amount paid and for which he had received no compensation. Mr. Vogt owed the Debtor at least the amount transferred. Badger allowed VATW to use funds in secured accounts to pay employees and would have presumably sanctioned a transfer of his unpaid salary to Mr. Vogt. The transfer from VATW to the Debtor is not fraudulent simply because Mr. Vogt omitted the intermediate step of issuing a check to himself first. It was still his money that went to pay the debtor. See Trew v. Trew, 558 N.W. 2d 314 (Neb. Ct. App. 1996) (stating that implicit in "transfer" of property is requirement that debtor possesses the asset, inasmuch as a person cannot transfer asset that she does not own).

Badger's standing to object to the plan depends upon the Debtor's receipt of a fraudulent transfer. Since the transfer was not fraudulent, the Debtor is not obligated to Badger and Badger does not have standing to object to her plan. Thus, I will not explore Badger's objection based on the marital property agreement at this time.

¹Wisconsin Statute §242.05(1) provides:

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.