

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In re:

Anthony J. Randolph,

*Debtor.*

Chapter 13

Case No.: 23-60187-pgr

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Anthony J. Randolph,

*Plaintiff,*

Adv. Pro. No.: 23-80012-pgr

v.

Broome County Real Property and  
Roman Argudo,

*Defendants.*

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APPEARANCES:

GRADY BK, PLLC

*ATTORNEYS FOR DEBTOR*

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CHERYL D. SULLIVAN, ESQ.

**DECISION AND ORDER GRANTING PLAINTIFF PARTIAL JUDGMENT  
ON THE PLEADINGS AND DETERMINING  
TRANSFER OF REAL PROPERTY AVOIDABLE**

1. On March 22, 2023, Anthony Randolph (the “Debtor”), by and through his counsel, filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code. (BK Docket No. 1).

2. On July 17, 2023, the Debtor, by and through his counsel, commenced this Adversary Proceeding by filing a Complaint against Defendants Broome County Real Property (the “County”) and Roman Argudo. (AP Docket No. 1).
3. The County filed an Answer on August 1, 2023. (AP Docket No. 5).
4. Defendant Argudo did not file an Answer or otherwise respond to the Complaint.
5. The Debtor and the County submitted a stipulation of facts on February 27, 2024. (AP Docket No. 14).
6. This Court held preliminary status conferences on October 24, 2023, November 21, 2023, December 19, 2023, and February 27, 2024. A conference pursuant to 11 U.S.C. § 105(a) was held on April 16, 2024.
7. Defendant Argudo did not appear at any of these conferences.<sup>1</sup>
8. During the April 16, 2024 conference, counsel for the Debtor and the County made oral cross-motions for judgments on the pleadings. (Audio file for 4/16/24, AP Docket No. 18).

### **Findings of Fact**

9. This Court makes the following findings of fact based on its review of the pleadings and proceedings, as well as the stipulation of facts submitted by the Debtor and County.
10. On October 19, 2022, the County conducted an in-rem tax foreclosure pursuant to Article 11 of the New York State Real Property Law with respect to the

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<sup>1</sup> Defendant Argudo did have a telephone conversation with court personnel, which indicates that he had knowledge of the instant matter.

Debtor's real property located at 237 Garden Lane, Vestal, NY 13850 (the "Property") (AP Docket No. 14 at ¶4).

11. A deed transferring the Property to the County was recorded on October 28, 2022. (*Id.*).

12. The Debtor owed approximately \$11,000 in real property taxes at the time of transfer. (*Id.* at ¶3).

13. The Property's value, per a 2022 tax assessment, was \$57,000. (*Id.* at ¶2).

14. The Debtor filed a Chapter 13 case on March 22, 2023. (BK Docket No. 1).

15. The Debtor's Schedules indicated that he owned the Property. (Sch. A, at BK Docket No. 1).

16. On May 12, 2023, the County sold the Property to Defendant Argudo for \$105,000. (AP Docket No. 14 at ¶6).

17. Defendant Argudo recorded the deed to the Property on May 17, 2023. (*Id.*).

### **Conclusions of Law**

18. Upon consideration of the pleadings and proceedings herein and after due deliberation, this Court makes the following conclusions of law.

19. Pursuant to Federal Rule of Bankruptcy Procedure 7012(b), Federal Rule of Civil Procedure 12 ("FRCP 12") applies to adversary proceedings. Fed. R. Bankr. P. 7012.

20. Under FRCP 12(c), parties "may move for judgment on the pleadings." Fed. R. Civ. P. 12(c).

21. “If matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.” Fed. R. Civ. P. 12(d).
22. “However, such conversion is not necessary if the ‘matters’ in question consist of (1) documents attached to the complaint or answer, (2) documents incorporated by reference in the complaint (and provided by the parties), (3) documents that, although not incorporated by reference, are ‘integral’ to the complaint, or (4) any matter of which the court can take judicial notice for the factual background of the case.” *Cascio v. Nettles*, No. 8:09-CV-1128 GTS/DRH, 2011 WL 3847337, at \*2 (N.D.N.Y. Aug. 30, 2011); *see also L-7 Designs, Inc. v. Old Navy, LLC*, 647 F.3d 419, 422 (2d Cir. 2011).
23. Courts have considered parties’ stipulated undisputed facts when adjudicating Rule 12 motions. *See Prime Victor Intl. Ltd. v. Simulacra Corp.*, No. CV 23-176-MAK, 2023 WL 4546333, at \*1 n.1 (D. Del. July 14, 2023), *appeal dismissed sub nom. Prime Victor Int’l Ltd. v. Simulacra Corp.*, No. 23-2622, 2024 WL 958377 (3d Cir. Jan. 12, 2024); *see also Alcedo v. State Farm Mut. Automobile Ins. Co.*, 391 F. Supp. 3d 452, 454 (E.D. Pa. 2019).
24. Here, the Debtor filed a Complaint, the County interposed an Answer, and the Debtor and County submitted a stipulation of facts.
25. In addition, this Court deems Debtor’s Petition and Schedules integral to the pleadings, and therefore, will consider these documents.

26. For the following reasons, this Court finds that the transfer of the Property is subject to avoidance.

27. First, the Debtor has standing to bring this action.

28. Debtors who qualify for a homestead exemption have standing to assert avoidance actions. *See* 11 U.S.C. §§ 522(g)(1) and (h); *Gunsalus v. Cnty. of Ontario, N.Y.*, 37 F.4th 859, 863 (2d Cir. 2022), *cert. denied*, 143 S. Ct. 447 (2022); 4 *Collier on Bankruptcy* P § 522.12 (16th ed. 2024) (“Under section 522(h), the debtor has the opportunity to recover otherwise exempt assets from creditors who have received avoidable transfers.”).

29. Section 522(h) of the Bankruptcy Code provides that “[t]he debtor may avoid a transfer of property of the debtor . . . to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if— (1) such transfer is avoidable under section . . . 548 . . . and (2) the trustee does not attempt to avoid such transfer.” 11 U.S.C. § 522(h).

30. Additionally, a Debtor’s avoidance ability under § 522(h) may be triggered if, as § 522(g)(1) provides: (1) the property qualified for an exemption under § 522(b); (2) the property was involuntarily transferred; and (3) the Debtor did not conceal the property. *See In re Martyak*, 432 B.R. 25, 32 (Bankr. N.D.N.Y. 2010).

31. Here, the Debtor claimed a homestead exemption of \$89,975 pursuant to the conjunctive authority of 11 U.S.C. § 522(b)(3) and applicable New York State law. N.Y. C.P.L.R. § 5206.
32. The Parties agreed that the value of the Property was \$57,000 at the time of the transfer.
33. Therefore, the Court finds that the Property qualified for a §522(b) exemption.
34. Additionally, the County secured a foreclosure judgment against the Debtor and transferred the property against the Debtor's will. (AP Docket No. 14 at ¶4).
35. This was an involuntary transaction.
36. Further, the Debtor reported the Property on his Schedules, and therefore, did not conceal it.
37. It follows that the Debtor has standing to avoid the transfer.
38. Under 11 U.S.C. § 548(a)(1)(B), Debtors may avoid a transfer of property if the following elements are met: "(1) the debtor had an interest in the property; (2) a transfer of the property occurred within two years of the filing of the bankruptcy petition; (3) the debtor was insolvent at the time of the transfer or became insolvent as a result of the transfer; and (4) the debtor received less than reasonably equivalent value in exchange for the property transfer." 11 U.S.C. § 548(a)(1)(B); *Gunsalus*, 37 F.4<sup>th</sup> at 864 (2d Cir. 2022).
39. The Debtor purchased the Property in 2013. His ownership interest in the Property prior to the transfer is not disputed.

40. The County effectuated an involuntary transfer of the Property on October 28, 2022, which was within two years of the Debtor's petition date on March 22, 2023.
41. The second element is satisfied.
42. The Court now turns to whether the Debtor was insolvent at the time of transfer.
43. Insolvency is established where the sum of a debtor's debts is greater than a fair valuation of the debtor's assets. 11 U.S.C. § 101(32).
44. Exempt property is excluded from the solvency calculation. *Id*; see also *In re Heidt*, 626 B.R. 777, 793 (Bankr. D.N.J. 2021) (upholding Debtor's assertion that if his assets (less exemptions) were less than the amount of his debts, then he would be insolvent).
45. Here, Debtor alleged that he was insolvent because he was unable to pay the delinquent property taxes at the time of transfer. (AP Docket No. 1 ¶19(c)).
46. Under FRCP 12 standards, the Debtor's allegation alone is insufficient to establish insolvency. See *L-7 Designs, Inc. v. Old Navy, LLC*, 647 F.3d 419, 422 (2d Cir. 2011) (employing the same standard under FRCP 12(b)(6) dismissals to FRCP 12(c) motions); *In re Drummon*, No. 19-10670 (JLG), 2024 WL 628605, at \*5 (Bankr. S.D.N.Y. Feb. 14, 2024).
47. Additionally, "if a complaint's allegations are clearly contradicted by documents incorporated into the pleadings by reference, the Court need not accept them." *In re Haynes*, No. 11-23212 (RDD), 2014 WL 3608891, at \*2

(Bankr. S.D.N.Y. July 22, 2014); *Labajo v. Best Buy Stores, LP*, 478 F.Supp.2d 523, 528 (S.D.N.Y. 2007).

48. However, “a court should consider the full factual picture presented by the complaint, the particular cause of action and its elements, and the existence of alternative explanations so obvious that they render plaintiff’s inferences unreasonable.” *L-7 Designs, Inc.*, 647 F.3d at 430.

49. And as previously mentioned, for FRCP 12(c) purposes, courts have considered documents incorporated by reference in the complaint or documents that are integral to the complaint. *Nettles*, 2011 WL 3847337, at \*2; *L-7 Designs, Inc.*, 647 F.3d at 422.

50. This Court will look to the Debtor’s Schedules, Statement of Income, and Statement of Financial Affairs, which were signed by Debtor under penalty of perjury, to assess the value of the Debtor’s assets at the time of transfer. *See Steffens v. Citicorp. Mortg., Inc.*, 148 B.R. 914, 916-917 (Bankr. W.D. Mo. 1993) (taking judicial notice of schedules and statements part of the debtor’s file since neither party provided evidence of insolvency).

51. Further, this Court notes that while the County’s Answer disputes the Debtor’s insolvency at the time of the transfer (AP Docket No. 5 at ¶6), the County did not submit any evidence to support that denial and asked this Court to render a ruling based on the pleadings, stipulated facts, and applicable law, without seeking discovery or submitting further evidence or arguments.



52. On his Statement of Income, the Debtor indicated that his average monthly income during the six full months before he filed for bankruptcy was \$385.00.
53. The six-month period before the Debtor filed for bankruptcy included the date that the County transferred the property, which was on October 28, 2022.
54. According to Debtor's Schedules, his monthly income as of the date of filing was \$1,785 (consisting of Social Security payments, family help, and public assistance) against monthly expenses of \$1,376. (Schedules I & J, at BK Docket No. 1).
55. The only real property identified on the Schedules is the Property at issue here. (Sch. A, at BK Docket No. 1).
56. The Debtor disclosed the following personal property: two vehicles, a 2012 Ford Focus and 2002 Ford Explorer, with a combined value of \$4,166; household goods and electronics valued at \$3,400; clothing and jewelry worth \$1,615; a lawnmower valued at \$700; a "Social Security debit card" with a \$220 balance; and \$70 in bank accounts. (Sch. B, at BK Docket No. 1).
57. The total estimated value of Debtor's personal property at the time of filing was \$10,171. (Sch. B, at BK Docket No. 1).
58. The Debtor claimed \$89,975 in equity in the Property as exempt and claimed exemptions for the full value of his personal property. (Sch. C, at BK Docket No. 1).

59. In his Statement of Financial Affairs, the Debtor denied selling, trading, or transferring any property during the two-year period preceding the bankruptcy filing. (Statement of Financial Affairs, at BK Docket No. 1).
60. Accordingly, this Court finds that the value of the Debtor's non-exempt assets as of the date of filing was \$0.
61. Although the transfer of the Property occurred approximately five months before the bankruptcy filing, there is no indication, and this Court was provided with no evidence, that the value of Debtor's assets was materially different as of the date of the transfer.
62. In the stipulation of facts, the County and Debtor agreed that the Debtor owed delinquent real property taxes of approximately \$11,000 at the time of the transfer.
63. As previously mentioned, the Court can take notice of "stipulated undisputed facts" when adjudicating FRCP 12 motions. *See Simulacra Corp.*, 2023 WL 4546333, at \*1 n.1 (D. Del. July 14, 2023).
64. This Court finds that the Debtor owed at least \$11,000 at the time of transfer.
65. Therefore, because the amount of the Debtor's debt (\$11,000) was more than the value of his assets (\$0) at the time of transfer, the third avoidance element is satisfied.
66. The Court will now address whether the Debtor received less than a reasonably equivalent value in exchange for the property transfer.

67. “To decide whether a transfer is for reasonably equivalent value, courts consider whether the debtor has received value that is substantially comparable to the worth of the transferred property.” *Gunsalus v. Cnty. of Ontario, N.Y.*, 37 F.4th 859, 864 (2d Cir. 2022), cert. denied, 143 S. Ct. 447 (2022) (quotations and citation omitted).
68. Forced sales based on unsatisfied tax liens are “not entitled to the presumption of having provided reasonably equivalent value under section 548.” *Id.* at 866 (affirming the lower courts which held that the debtors met their burden of proving that the transfer of their home, worth at least \$22,000—in exchange for satisfying a \$1,290 tax debt, was not for reasonably equivalent value).
69. A “large or significant disparity between the market value of what the debtor gave and what the debtor received typically precludes a finding of reasonable equivalence.” 5 *Collier on Bankruptcy* P § 548.05[2][a]; see *In re Herkimer Forest Products Corp.*, No. 04-13978, 2005 WL 6237559, at \*4 (Bankr. N.D.N.Y. July 26, 2005).
70. Here, the County transferred the Property worth at least \$57,000 in exchange for the satisfaction of an \$11,000 property tax debt. This resulted in a market value disparity of \$46,000.
71. This was not a transfer for reasonably equivalent value.
72. Accordingly, the Debtor met his burden under §548 and the transfer of the Property is subject to avoidance.

73. The Court will now address two additional affirmative defenses raised in the County's Answer: (a) whether the County is subject to this proceeding since it is not the current owner of the Property and cannot return ownership to the Debtor and (b) whether the County is subject to suit under N.Y. County Law § 51.<sup>2</sup> (AP Docket No. 5, ¶¶10-11).
74. First, the County is not required to be the current owner of the Property to be a properly named defendant in this avoidance and recovery action. *See In re M. Fabrikant & Sons, Inc.*, 394 B.R. 721, 745 (Bankr. S.D.N.Y. 2008) (stating that "[a]s a general rule, an intermediate grantee through whom the title to the property passes from the debtor to the ultimate grantee, and whose title and interest in the property has been divested, is not a necessary, although he or she may be a proper, party") (citations omitted).
75. Some courts have even *required* debtors to sue the initial transferee in an avoidance action before commencing a recovery action under 11 U.S.C. § 550. *In re Furs by Albert & Marc Kaufman, Inc.*, No. 03-41301 SMB, 2006 WL 3735621, at \*8 (Bankr. S.D.N.Y. Dec. 14, 2006); *In re Slack-Horner Foundries Co.*, 971 F.2d 577, 580 (10th Cir. 1992).
76. This Court need not decide here whether it is necessary to sue an initial transferee before suing a subsequent transferee.
77. However, this Court does hold that, at minimum, the Debtor may sue both the initial transferee and the subsequent transferee.

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<sup>2</sup> N.Y. County law § 51 provides that "[a]ctions or proceedings by or against a county shall be in the name of the county."

78. Second, the County asserted that it is not an entity subject to suit under N.Y. County Law § 51.

79. However, the Parties' stipulation affirmed that County was a defendant in this proceeding, conducted an in-rem tax foreclosure on the Property, and effectuated the transfer in question. (AP Docket No. 14 at ¶4). The Court interprets this stipulation as the County's concession that it is a proper party defendant in this proceeding. Therefore, this affirmative defense is unavailing.

80. The Court will now address the Debtor's ability to recover the Property from Defendant Argudo.

81. 11 U.S.C § 550(a) provides that "the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or (2) any immediate or mediate transferee of such initial transferee." 11 U.S.C. § 550(a).

82. Here, the County sold the Property to Defendant Argudo on May 12, 2023. Argudo recorded the deed on May 17, 2023, becoming the "immediate or mediate transferee" with respect to § 550(a)(2).

83. Defendant Argudo was served with the Complaint (AP Docket No. 4), but did not file an Answer or otherwise move with respect to the Complaint. He has not presented any defenses. He has not made any oral or written pleadings or motions. He has not appeared at any of the Court's hearings or conferences.

84. However, “[a] motion for judgment on the pleadings is not the correct procedural remedy when no answer has been filed, rather a motion for entry of default judgment should be made.” *In re Villegas*, 132 B.R. 742, 745 (Bankr. App. 9th Cir. 1991) (citations omitted).

85. This Court’s Local Rule 7055-1 sets forth the process and procedure for a plaintiff to request a default judgment.

86. Accordingly, while this Court finds the transfer of the Property to the County avoidable for the reasons set forth above, the Debtor must comply with Local Rule 7055-1 to seek entry of default judgment against Defendant Argudo.

87. The Debtor is granted partial judgment on the pleadings with respect to the County for the reasons stated herein.

Dated: May 16, 2024  
Utica, New York

/s/ Patrick G. Radel  
Patrick G. Radel  
United States Bankruptcy Judge