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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3149-12T1

INDEPENDENCE PLAZA 1 ASSOCIATES, L.L.C.,

Plaintiff-Respondent,

v.

PHILLIP LOUIS TRADING, INC. and JOHN FIGLIOLINI.

Defendants-Appellants.

Submitted June 25, 2014 – Decided July 17, 2014

Before Judges Fuentes and Koblitz.

On appeal from Superior Court of New Jersey, Chancery Division, Monmouth County, Docket No. C-190-11.

Kenneth C. Marano, attorney for appellant.

Henry F. Wolf, III, attorney for respondent.

PER CURIAM

Defendant John Figliolini appeals from the January 24, 2013 order of the Chancery judge entering judgment against him for $115,248 plus pre-judgment interest and costs. This represented part of a $188,526.95 judgment for unpaid rents entered by default against defendant Phillip Louis Trading, Inc. (Phillip Louis), a registered securities broker, which was wholly owned

by Suncoast Holding Company, which was in turn wholly owned by Figliolini. The judge entered judgment against Figliolini, the former president and CEO of the defunct Phillip Louis, pursuant to New Jersey's Uniform Fraudulent Transfer Act, N.J.S.A. 25:2-20 to -34 (UFTA). We affirm substantially for the reasons expressed by Judge Thomas W. Cavanagh, Jr., in his thorough oral opinion of December 26, 2012 and January 21, 2013.

On March 20, 2003 Phillip Louis stopped paying monthly rent of $6,000 plus common area maintenance charges to Independence Plaza, although the lease did not expire until January 31, 2006. Although Figliolini was the signatory on the lease, he never personally guaranteed the lease. On March 31, 2003, Phillip Louis voluntarily ceased its business operation and vacated the rental space.[1] At about that time Phillip Louis transferred $254,000 to a Jersey Shore Trading Company (Jersey Shore) "clearing account"[2] and Figliolini became employed by Jersey Shore, as "an independent contractor/stockbroker." Jersey Shore was owned by a friend and former employee of Figliolini.

[1] A replacement tenant was found in the summer of 2004.

[2] A clearing account is an account held at a clearing firm, which generally "is responsible for maintaining records and mailing customer account documentation, as well as receiving, maintaining and delivering customers' securities and funds." McDaniel v. Bear Sterns & Co., 196 F. Supp. 2d 343, 347 (S.D.N.Y. 2002). A clearing account is thus similar to an escrow account.

Figliolini worked at Jersey Shore for more than two years and was paid by commission. Figliolini brought computers, office equipment, furniture[3] and approximately 200 customer accounts with him to his new job. Although Figliolini did not personally receive a portion of the $254,000 transferred to Jersey Shore, Judge Cavanagh found that Figliolini benefited from funding the Jersey Shore clearing account by obtaining the ability to transfer his customers, continue trading, and receive a greater commission.

The UFTA provides in pertinent part that

> 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.
>
> [N.J.S.A. 25:2-27(a).]

Judge Cavanagh found after trial that Phillip Louis did not receive anything in exchange for the transfer of funds to the Jersey Shore clearing account or the transfer of office equipment and furniture to Jersey Shore. As a result of the

[3] An audit report of Phillip Louis dated December 31, 2002 valued the firm's fixed assets, including "[f]urniture and fixtures and leases" and "[l]easehold improvements" at $99,950.

transfers, Judge Cavanagh found that Phillip Louis became insolvent. The judge also analyzed the situation pursuant to the framework of an application to pierce the corporate veil, finding that the evidence supported such a finding as well. Judge Cavanagh determined that, due to a rent abatement provided to the new tenant, the past-due rent owed by Figliolini was $115,248.

Figliolini argues on appeal that the evidence did not support the judge's findings. He argues that plaintiff did not demonstrate that Phillip Louis became insolvent as a result of the clearing account transfer, relying on the fact that Phillip Louis retained an adequate amount of funds in its clearing account and remained "capital compliant" pursuant to Financial Industry Regulatory Authority regulations until it ceased operations. Defendant stipulated at trial, however, that "in March 2003, . . . Figliolini went to work for Jersey Shore Trading Company, the balance on deposit under [Phillip Louis's] clearing agreement with [First Southwest] was transferred to Jersey Shore's clearing account with [First Southwest] and [Phillip Louis's] clearing agreement, by agreement of the parties, was terminated upon payment of a [$15,000] fee." Judge Cavanagh concluded that the clearing account was Phillip Louis's only remaining liquid asset and, therefore, that transfer

rendered Phillip Louis insolvent. Further, after Figliolini filed a broker-dealer withdrawal on behalf of Phillip Louis, the firm could no longer earn any money. See N.J.S.A. 25:2-23(b) ("A debtor who is generally not paying his debts as they become due is presumed to be insolvent."); N.J.S.A. 25:2-23(a) ("A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets, at a fair valuation."); see also Dixon v. Eckert, 117 N.J. Eq. 544, 545 (E. & A. 1935) ("a conveyance made by a person who is or will be thereby rendered insolvent is fraudulent as to creditors").

Our standard of review of a bench trial is whether the trial judge's findings of fact are "supported by sufficient, credible evidence in the record." Fanarjian v. Moskowitz, 237 N.J. Super. 395, 406 (App. Div. 1989). We review the evidence here with the understanding that stipulations made by the parties are binding. Negrotti v. Negrotti, 98 N.J. 428, 432 (1985).

Judge Cavanagh analyzed the facts he adduced at trial using the guidance of AYR Composition, Inc. v. Rosenberg, 261 N.J. Super. 495, 506 (1993), where, in a similar context, we discuss fraudulent transfers and piercing the corporate veil. See also United Jersey Bank v. Vajda, 299 N.J. Super. 161, 163-64 (1997) (where we discuss the elements of a fraudulent transfer). We

affirm for the reasons expressed by Judge Cavanagh in his legal analysis. Sufficient credible evidence exists in the record to support his conclusions.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION