United States Bankruptcy Court
Western District of Wisconsin

Cite as: [Unpublished]

Jerry J. Armstrong, Plaintiff, v.
Anchorbank, S.S.B., f/k/a Anchor
Savings and Loan Association, Defendant
(In re Christopher L. Trudell and Mary E. Trudell, Debtors)
Bankruptcy Case No. 91-32942-7, Adv. Case No. 93-3021-7

United States Bankruptcy Court
W.D. Wisconsin

August 13, 1993

Timothy J. Peyton, Kepler & Peyton, Madison, WI, for debtors.
Thomas J. Zaremba, Wheeler, Van Sickle & Anderson, S.C., Madison, WI, for AnchorBank.
Jerry J. Armstrong, Madison, WI, for trustee.

Robert D. Martin, United States Bankruptcy Judge.

MEMORANDUM DECISION

The Chapter 7 trustee commenced this adversary proceeding to recover an alleged preferential payment that Christopher and Mary Trudell ("debtors") made to AnchorBank. The debtors had obtained a mortgage loan from AnchorBank in 1989 and unsecured consumer loans in 1989 and 1990. In April, 1991, the debtors applied to AnchorBank for a residential mortgage loan to purchase a new home. In support of their application, the debtors submitted a financial statement dated April 10, 1991, which disclosed that they had a net worth of approximately $185,000,[(1)] including personal assets of $30,000. The majority of their remaining assets related to Mr. Trudell's business.

In April, 1991, Mr. Trudell was a one-third owner and vice president of Horizon Marketing, Inc. which owned and operated three Box Office Video stores in Madison. His financial statement disclosed $52,000 annual income from Box Office Video. The statement further disclosed that Mr. Trudell's shares in Horizon Marketing, Inc. had a value of $200,000, excluding contingent liabilities of $180,000. In a letter accompanying the April financial statement, Mr. Trudell stated that, although he would be changing employment soon, he intended to retain his ownership interest in and income from the Box Office Video stores.

Sometime in May of 1991, without AnchorBank's knowledge, Horizon Marketing, Inc. went into receivership. Subsequently, sometime in the summer of 1991,[(2)] its business assets were sold to Uwerks, a corporation owned by Mrs. Trudell's father. Uwerks had been formed to maintain the video business and Mr. Trudell's income stream while he looked for a buyer for the business. Although Mr. Trudell never owned stock in Uwerks, he was president of Uwerks and worked part-time as a financial consultant for the corporation, receiving $1,000 a week. Uwerks eventually assumed the business leases

and some corporate debt of Horizon Marketing, Inc.

On May 30, 1991 and May 31, 1991, the debtors signed the formal mortgage loan application. The April 10, 1991 financial statement was incorporated into that loan application. On the application, Mr. Trudell listed his employer as Box Office Video and his base employment income as $52,000. The May, 1991 loan application disclosed that the debtors retained a positive net worth, including personal assets of $35,000. According to the loan application, the net worth of the debtors' business was $200,000. Mr. Trudell testified that he believed that his net worth on May 31, 1991 exceeded $180,000.

On June 12, 1991, AnchorBank ordered a residential mortgage credit report on the debtors in connection with their mortgage loan application. The credit report was released on June 17, 1991 and reissued on June 27, 1991. The credit report indicated that the debtors were not delinquent on their debts.

The debtors intended to sell their current home and purchase their new home simultaneously, using the equity in the current home as a down payment for the new home. However, the final contracts required the closing on the purchase of their new home by June 28, 1991, and the closing on the sale of their prior home on July 15, 1991. On or near June 24, 1991, the debtors applied to AnchorBank for a "bridge loan" to make the down payment on their new home and to be repaid at the sale of their prior home. On June 25, 1991, AnchorBank made an unsecured bridge loan to the debtors for $20,000. The loan was due and payable in a single payment on July 25, 1991. After the sale closed on July 15, 1991, AnchorBank was paid $18,100.04 on the bridge loan. This payment is the transfer which the trustee now seeks to avoid.

The debtors filed a petition under Chapter 7 on August 28, 1991. According to the debtors' schedules, the value of the debtors' real property was $473,000[(3)] and the value of the debtors' personal property was $18,489.77. Excluding exemptions equalling approximately $22,318.50,[(4)] the value of the debtors' assets equalled $469,171.27 on August 28, 1991. The debtors scheduled $437,380.43 in secured claims, $54,252.68 in priority claims, $23,897.03[(5)] in unsecured, noncontingent, liquidated, and nondisputed claims, and $141,325.75 in contingent claims held jointly by Mr. Trudell and Dan Trudell, a non-debtor.

In the latter half of 1992, Uwerks' assets were sold for an unknown amount. Sometime in October or November, 1992, Mr. Trudell received $56,000 in connection with the sale, reportedly in exchange for his noncompetition covenant.

On May 5, 1993, this court held a trial to determine whether the $18,100.04 payment to AnchorBank on July 15, 1991 may be avoided pursuant to 11 USC § 547. AnchorBank argued that the debtors were solvent at the time of the transfer, or alternatively, that the "ordinary course of business" or the "contemporaneous exchange of value" defense applies. At the close of the trial, I rejected the contemporaneous exchange defense.

Section 547 of the Bankruptcy Code permits a trustee to undo certain prepetition transfers of a debtor's interest in property. The trustee has the burden of proving the avoidability of a transfer. 11 USC § 547(g). To avoid a transfer, five conditions must be met.[(6)] If all are met, the defendant may still prove eligible for some specific exceptions. See 11 USC §§ 547(c), (g). In this proceeding, the only dispute that remains is whether the debtors were insolvent at the time of the transfer and, if so, whether the ordinary course of business exception applies.[(7)]

I.

To constitute an avoidable preference, the transfer must have occurred while the debtors were insolvent. The term "insolvent" means:

(A) with reference to an entity other than a partnership and a municipality, financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of--

(i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity's creditors; and

(ii) property that may be exempted from property of the estate under section 522 of this title.

11 USC § 101(32). Under this "balance sheet" definition, the debtors are insolvent if the fair value of their nonexempt property is less than their liabilities. In re Koubourlis, 869 F2d 1319, 1321 (9th Cir 1989). The determination of insolvency must be made as of July 15, 1991. See In re Davis, 120 BR 823, 825 (Bankr WD Pa 1990) ("[e]vidence of insolvency on the date of the transfer is the critical issue and proof of insolvency on any other date is insufficient to prove this element").

The court has no direct evidence of the debtors' financial situation on July 15, 1991. On the contrary, AnchorBank submitted some evidence of the debtors' solvency in April, May, and June of 1991, while the trustee submitted some evidence of the debtors' insolvency on August 28, 1991. Both parties ask the court to extrapolate from moderately distant dates, between which there was much activity, to July 15, 1991.[(8)] With this sort of evidence, the availability of the insolvency presumption and the ultimate burden of proof become paramount.

The debtors are presumed to be insolvent during the 90 days immediately preceding the petition filing date. 11 USC § 547(f). Rule 301 of the Federal Rules of Evidence ("FRE"), made applicable in bankruptcy by Rule 9017 of the Federal Rules of Bankruptcy Procedure ("FRBP"), provides that:

In all civil actions and proceedings not otherwise provided for by Act of Congress or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

FRE 301. FRE 301 does not clarify what quantum of proof is required to rebut a presumption. The legislative history of § 547(f) states that "[t]he presumption requires the party against whom the presumption exists to come forward with some evidence to rebut the presumption, but the burden of proof remains on the party in whose favor the presumption exists." H Rept No 95-595 to accompany HR 8200, 95th Cong, 1st Sess 375 (1977). A presumption is rebutted upon the introduction of substantial evidence which would support a finding of the nonexistence of the presumed fact. Russell, Bankruptcy Evidence Manual, § 301.3 at 160 (West 1993). The amount of evidence needed to rebut a presumption depends upon "the policy reasons favoring the presumption, the strength of the evidence supporting the presumption, and the quality and believability of the rebutting evidence." Id.

The policy supporting the insolvency presumption has been articulated as follows:

The 1978 creation of the presumption of insolvency was a change in the prior law designed to simplify the trustee's former burden of reconstructing the debtor's books and records, even though it was unusual that a debtor was not insolvent for the 90 days

before the bankruptcy petition was filed.

Matter of Emerald Oil Co., 695 F2d 833, 838 n 5 (5th Cir 1983) (citations omitted). The insolvency presumption is an apparent recognition of the probability that debtors are insolvent 90 days preceding the bankruptcy filing. The presumption eases the trustee's burden by not requiring that the trustee laboriously reconstruct the debtor's financial affairs on the transfer date unless insolvency is an actual issue in the case.

If insolvency is an issue in the case, a creditor may rebut the presumption upon the introduction of sufficient evidence of solvency. A speculative showing of solvency, such as simply questioning the debtor's accounting methods, is insufficient to rebut the presumption of insolvency. See Matter of Emerald Oil Co., 695 F2d 833, 838 (5th Cir 1983). In addition, unverified, self-serving evidence is unlikely to rebut the presumption. See In re Pioneer Technology, Inc., 107 BR 698, 701 (9th Cir BAP 1988) (transferee's unsubstantiated affidavit that the debtor's assets exceeded its liabilities were insufficient to rebut presumption of insolvency); In re Tuggle Pontiac-Buick-GMC, Inc., 31 BR 49, 52 (Bankr ED Tenn 1983) (in-house operating report and the testimony of the owner and president of the debtor insufficient to rebut insolvency presumption). However, financial information in the bankruptcy schedules may be sufficient to rebut the presumption. See In re Koubourlis, 869 F2d 1319, 1322 (9th Cir 1989) (sworn affidavit by creditor's attorney which demonstrated that, by the debtors' own schedules, the debts may not have been greater than assets, rebutted the presumption of insolvency); In re Pembroke Development Corp., 122 BR 610, 612 (Bankr SD Fla 1991) (debtor's schedules, which indicated that the value of the its property exceeded the value of its liabilities by approximately three million dollars, was sufficient to rebut the insolvency presumption). Moreover, financial information that the debtor provides to a creditor may rebut the presumption. See In re Eichorn, 11 BR 81, 83 (Bankr D Mass 1981) (letter from the debtor stating that the value of the property exceeded the mortgage thereon was sufficient to rebut the presumption of insolvency); In re T.M. Sweeney & Sons, LTL Services, Inc., 120 BR 101, 103 (Bankr ND Ill 1990) (presumption of insolvency rebutted by the debtor's balance sheet and the testimony of its former president that the debtor's assets were greater than its liabilities).

In this proceeding, AnchorBank has sufficiently rebutted the presumption of insolvency. AnchorBank presented evidence that the debtors had a net worth of approximately $185,000 in April, 1991, and $180,000 in May, 1991. In June, 1991, AnchorBank completed its mortgage loan approval process and was satisfied that the mortgage loan should be consummated. At no time did the debtors inform AnchorBank that their financial situation had changed from April and May of 1991, despite their continuing obligation to do so.(9) Indeed, the debtors behaved in a manner suggesting the contrary. Although AnchorBank did not present direct evidence of the debtors' solvency on July 15, 1991, it provided substantial evidence of solvency on several dates shortly preceding July 15, 1991, which was sufficient to refute the debtors' presumed insolvency on the transfer date.

Once the presumption of insolvency is rebutted, the presumption vanishes and the trustee must prove the debtors' insolvency. Russell, Bankruptcy Evidence Manual, § 301.3 at 160 (West 1993). The trustee asks this court to infer insolvency on July 15, 1991. If the transfer date is close to the petition date, and no substantial change in circumstances between the two dates is demonstrated, a court may infer insolvency on the transfer date. See In re Colonial Discount Corp., 807 F2d 594, 598 (7th Cir 1986), cert. denied 481 US 1029 (1987). However, because the trustee submitted evidence of substantial change in the debtors' financial circumstances during the spring and/or summer of 1991, this inference is unavailable to the trustee. All that can be done is to attempt to reconstruct the debtors' financial situation on July 15, 1991.

The debtors scheduled $141,325.75 in contingent liabilities held jointly by Mr. Trudell and Dan Trudell. Contingent liabilities must be included in determining the debtors' insolvency. They must be discounted, however, by the probability that the contingency will occur and the liability become real. Matter of Xonics Photochemical, Inc., 841 F2d 198, 200 (7th Cir 1988). At least one court has found that contingent claims may be valued with the benefit of hindsight. See In re Sierra Steel, Inc., 96 BR 275, 279 (9th Cir BAP 1989).(10)

According to Mr. Trudell, sometime in the spring or summer of 1991, certain creditors sought enforcement of the personal guarantees against him for debts of Box Office Video, Horizon Marketing, Inc., and another unnamed corporation that Mr. Trudell sold in October, 1991. Testimony revealed that the following contingent claims were not pursued: Keith Albertson for $6,000; Tom Lasse for $4,516.70; Management by Design for $2,080; Jim Seefeldt for $1,040; Opitz Management for $5,000; and the Video Box Office debt for $31,922.07.(11) The $1,000 debt to Midvale Plaza Joint Venture was eventually settled. Mr. Trudell testified that the following contingent claims were pursued: Ingram for $5,000; MS Distributing Company for $36,053.27; and Luttig & Anunson for $963. Mr. Trudell could not remember which contingent creditors were pursuing their personal guarantees on July 15, 1991.

Mr. Trudell further testified that, as of July 15, 1991, the transfer of assets to Uwerks had "substantially" taken place and Uwerks had assumed approximately $80,000 of the business debt, but did not identify which of the scheduled debt fell in that category. By the transfer date, Uwerks assumed the real estate and equipment leases, which would apparently include the claims owing to Frank Rane for $950 a month and to Rice & Associates for $1,400 a month. According to this imprecise evidence, at least $53,908.77 in contingent claims were not pursued and must therefore be deducted from the total contingent liabilities. The debtors' contingent liabilities must be reduced even further to reflect Uwerks' assumption of $80,000 of the business debt. However, it is impossible from the evidence to determine the extent of that reduction. Finally, the total liability must be discounted by some unknown amount to reflect the joint liability of Dan Trudell.(12)

The debtors scheduled priority claims totalling $54,252.68. Schedule E listed a priority claim in favor of the IRS for $41,861.76.(13) It is unclear whether the taxes were assessed prior or subsequent to July 15, 1991. Although Mr. Trudell could not pinpoint when the IRS assessed the tax, it was not assessed prior to the last financial statement given to AnchorBank. If the IRS's scheduled claim is subtracted from the original total of $54,252.68, the priority claims totalled $12,390.92.

The debtors scheduled $437,380.43 in secured claims. The debtors' Schedule D lists claims for unknown amounts on two automobile leases. The debtors subsequently determined that those claims equalled $13,200 and $7,200. On July 15, 1991, however, the debtors were not in default on their two automobile leases. Accordingly, these amounts are not part of the equation.

Excepting the automobile leases scheduled for unknown amounts, the debtors' scheduled, secured debt consists of real estate debt owned jointly with Dan Trudell and the debtors' residence. For most of the properties, the debt equalled or exceeded the value.(14) If the real estate, other than the debtors' residence, and corresponding debt is removed from the equation, the debtors' assets included approximately $20,894.65 in real property value and personal property worth $18,489.77. With the subtraction of $22,318.50 in exemptions, the debtors' assets totalled approximately $17,065.92. If the taxes had not yet been assessed, the debtors' priority claims equalled $12,390.92. The debtors listed $23,897.03 in unsecured, noncontingent claims. The value of the

contingent liabilities is unclear.

Sometime in late 1992, Uwerks' assets were sold for an unknown amount. As a result of the sale, Mr. Trudell received $56,000, allegedly in exchange for a noncompetition covenant. In addition, Mr. Trudell received $1,000 a week from Uwerks for little if any work. The income stream of $1,000 a week leading to a balloon payment of $56,000 approximately 18 months later constitutes an asset in the insolvency equation.(15) Some number must therefore be included to represent the value of the salary and the $56,000 payment. However, neither party has offered any evidence from which this court can value that asset.

As is readily apparent, the debtors' "balance sheet" of assets and liabilities has not been precisely disclosed. Mr. Trudell's failure to remember the exact timing of certain events, including the pursuit of contingent claims against him, the assessment of taxes against him, Uwerks' sale, and Uwerks' assumption of assets makes mathematical accuracy impossible. The evidence indicates that, on July 15, 1991, the debtors more likely had fewer liabilities and more assets than are displayed in the debtors' schedules. Mr. Trudell's testimony suggested that, on July 15, 1991, the taxes had not yet been assessed against the debtors. In addition, the car leases were not in default on July 15, 1991. The transfer of assets to Uwerks had substantially taken place by July 15, 1991 and Uwerks had assumed $80,000 of the business debt by this date, thereby reducing the debtors' contingent liability considerably. Uwerks also assumed the real estate and equipment leases as of the transfer date. Finally, Mr. Trudell had a continuing interest in his former business, in the form of income, or interest, for $1,000 a week, which eventually ballooned into a $56,000 payment. That interest must be included as an asset in the insolvency equation. The combination of this evidence leads me to conclude that the greater weight of the evidence does not support a finding of insolvency. Because the trustee has failed to meet his burden of proving the debtors' insolvency on July 15, 1991, the transfer cannot be avoided as a preference.

II.

Even had the trustee succeeded in proving the debtors' insolvency, the ordinary course of business exception would prevent the avoidance of the transfer. Section 547(c)(2) provides an exception to the trustee's avoiding powers for transfers made in the ordinary course of a debtor's business or financial affairs.(16) The Bankruptcy Code does not define "ordinary course of business." According to the subsection's legislative history:

The second exception protects transfers in the ordinary course of business (or financial affairs, where a business is not involved) transfers. For the case of a consumer, the paragraph uses the phrase "financial affairs" to include such nonbusiness activities as payment of monthly utility bills. If the debt on account of which the transfer was made was incurred in the ordinary course of both the debtor and the transferee, . . . if the transfer itself was made in the ordinary course of both the debtor and the transferee, and if the transfer was made according to ordinary business terms, then the transfer is protected. The purpose of this exception is to leave undisturbed normal financial relations, because it does not detract from the general policy of the preference section to discourage unusual action by either the debtor or his creditors during the debtor's slide into bankruptcy.

H Rep No 95-595 to accompany HR 8200, 95th Cong., 1st Sess 373 (1977). As stated by the Seventh Circuit, "[t]he purpose of the ordinary course of business exception is to ensure that normal commercial transactions are not caught in the net of the trustee's avoidance powers." In re Colonial Discount Corp., 807 F2d 594, 600 (7th Cir 1986) (citing Barash v Public Finance Corp., 658 F2d 504, 510 (7th Cir 1981)).

The first two elements of the exception require that the debt be incurred and the transfer made in the ordinary course of the financial affairs between the debtors and AnchorBank. The course of conduct between the parties establishes what the ordinary course of business is between them. In re Writing Sales Limited Partnership, 96 BR 175, 178 (Bankr ED Wis 1989). Within a three year period, the debtors obtained two mortgage loans and three unsecured consumer loans from AnchorBank. Although the parties did not engage in numerous transactions, they developed a relationship of consumer lending against which this transaction can be measured. See In re Energy Co-op, Inc., 832 F2d 997, 1004 (7th Cir 1987) (creditor must show that debtors incurred debt and paid creditor in ways similar to other transactions).

One of AnchorBank's lending managers testified that he approves eight to ten bridge loans per year and that approximately ten percent of the bridge loans that he approves are unsecured. AnchorBank makes approximately 31 unsecured bridge loans each month. Approximately 12 of every 31 bridge loans exceed $10,000. The only evidence that the bridge loan was not in the ordinary course of AnchorBank's business was Mr. Trudell's testimony, as a real estate agent, that the loan's unsecured status made the loan unusual. However, his testimony to that effect is wholly hearsay, and even though not objected to, is not reliable. Moreover, although a lending manager at AnchorBank testified that the bank prefers to have the bridge loan secured, the absence of security did not make the loan nonordinary where the evidence indicated that AnchorBank makes many unsecured bridge loans every month. On this evidence, I find that the transaction occurred in the ordinary course of AnchorBank's business.(17)

The debt was also incurred and the transfer made in the ordinary course of the debtors' financial affairs. The debtors obtained the bridge loan in the process of buying a new home, a normal financial affair. The debtors were good clients who paid their debts to AnchorBank timely. The repayment of the bridge loan to AnchorBank was also timely and in accordance with every parties' expectations.(18) The parties introduced no evidence that this transaction differed in its timing or manner from past transactions that the debtors had with AnchorBank.

The final element requires that the transfer be made according to ordinary business terms. This element focuses on industry practice. In real estate transactions, it is not unusual to obtain a bridge loan to buy a new home prior to selling a current home. Objectively, there was nothing unusual in the manner in which the debtors obtained the bridge loan, bought their new home, and repaid the loan upon the sale of their prior home.

The repayment of $18,100.04 satisfied the standards for the § 547(c)(2) exception to the preference section. The repayment was within the ordinary course of business between the debtors and AnchorBank and pursuant to ordinary business terms.

For the reasons stated herein, the relief requested by the trustee pursuant to 11 USC § 547 is denied.

END NOTES:

1. On the April 10, 1991 financial statement, the debtors valued their net worth at $365,000, exclusive of $180,000 in contingent liabilities. Mr. Trudell testified that his net worth was approximately $180,000 on April 10, 1991.

2. Scant testimony was offered regarding the timing of certain events. Mr. Trudell could not recall exactly when Horizon Marketing, Inc. went into receivership, when Uwerks purchased the assets of Horizon Marketing, Inc. or when he began working for Uwerks.

3. The debtors owned four of the six real properties listed in Schedule A as tenants in common with Daniel Trudell. The debtors owned one of the properties as joint tenants with Daniel and Monica Trudell. The debtors owned the sixth property in fee simple.

4. This calculation includes the amendment to Schedule C filed on December 11, 1991 substituting the Wisconsin tax return in the amount of $481.00 for the business checking account in the amount of $458.50.

5. On the original Schedule F, the unsecured, noncontingent, liquidated, and nondisputed claims totalled $23,753.07. By amendment filed October 18, 1991, claims of $88.32 and $55.64 were added to Schedule F.

6. Specifically, § 547(b) provides:

(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property--

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made--

(A) on or within 90 days before the date of the filing of the petition; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if--

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

11 USC § 547(b).

7. The parties do not contest that the $18,100.04 payment to AnchorBank constituted a transfer of the debtors' property for an antecedent debt, occurred within 90 days of the petition filing, and enabled AnchorBank to receive a greater percentage of its claim than it would have received under Chapter 7 if the transfer had not been made.

8. For example, AnchorBank submitted evidence that, on May 31, 1991, the debtors valued their personal assets at $35,000. The trustee submitted evidence that on August 28, 1991--a date equally distant from the transfer date--the debtors valued their personal assets at $18,489.77. Assuming, arguendo, that both valuations are correct, the combined evidence gives no indication of exactly when and how quickly the personal assets depreciated in the interim.

9. In the April 10, 1991 financial statement submitted to AnchorBank, Mr. Trudell certified that the information contained therein continued to be true until further written notice of change.

10. In Sierra Steel, the bankruptcy court had deleted a contingent claim from the insolvency equation, apparently under the erroneous belief that disputed claims are not debts. On appeal, the debtor conceded that the contingent claim was worthless. The appeals court found that, given the debtor's concession, the bankruptcy court did not err in excluding the claim. Specifically, the court stated:

Debtor contends that we should not determine the amount of the claim with the benefit of hindsight, but rather we should value the claim based upon the knowledge that existed at the time of the transfer. However, as explained above, there is no policy reason why bankruptcy judges should not be allowed to consider subsequent events in valuing assets or determining liabilities.

Sierra Steel, 96 BR at 279 & n 6.

11. Although Mr. Trudell believed that the Video Box Office debt for approximately $32,000 was personally pursued against him, he also stated that the debt was assumed by Uwerks or the subsequent purchaser of Uwerks.

12. The trustee argues that this discount should not be made because Dan Trudell also filed a petition in bankruptcy on August 28, 1991. Technically, the court has no evidence that Dan Trudell filed for bankruptcy. Moreover, whether he filed a petition does not indicate whether and to what extent the contingent creditors were pursuing their claims against him on July 15, 1991.

13. The IRS subsequently filed a proof of claim for $58,622.20.

14. According to Schedule A, the Huron Road property, in which the debtors had a joint interest, had a value of $11,000 in excess of the debt. The parties offered no evidence regarding the debtors' interest in this property. Schedule A further indicated that the property bought by the debtors in June, 1991, had a value of $20,894.65 exceeding the mortgage.

15. The trustee argues that, because this asset was contingent, it should not be included in the equation. However, as stated by the Seventh Circuit, "[i]t makes no difference whether the firm has a contingent asset or a contingent liability; the asset or liability must be reduced to its present, or expected, value before a determination can be made whether the firm's assets exceed its liabilities." Matter of Xonics Photochemical, Inc., 841 F2d 198, 200 (7th Cir 1988).

16. Section 547(c)(2) provides:

(c) The trustee may not avoid under this section a transfer--

(2) to the extent that such transfer was--

(A) in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee;

(B) made in the ordinary course of business or financial affairs of the debtor and the transferee; and

(C) made according to ordinary business terms;

11 USC § 547(c)(2).

17. The trustee argues that, the combination of the bridge loan for $20,000 and the mortgage securing 80 percent of the property allowed AnchorBank to impermissibly

finance 99 percent of the property without obtaining private mortgage insurance. The trustee's argument is without merit. The mortgage and the bridge loan were two separate loans, one secured by real estate and the other unsecured. Although, under Anchorbank's loan policies, home mortgage loans are susceptible to private mortgage insurance, consumer loans are not.

18. The trustee argues that, because the contract provided that the bridge loan was due on July 25, 1991, the debtors' prepayment of the loan was nonordinary. Ample evidence revealed, however, that all parties intended that the bridge loan be repaid immediately after the closing on July 15, 1991.