

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 05-13442)
)
ELIZABETH RENEE RISER)
)
Debtor)
)
)
MARK A. WARSCO)
)
Plaintiff)
)
vs.) PROC. NO. 06-1164
)
)
OAK CREEK ESTATES)
LCF ENTERPRISES, LLC)
)
Defendants)

DECISION AND ORDER

At Fort Wayne, Indiana, on January 31, 2007.

By this adversary proceeding the trustee seeks to avoid the transfer of a mobile home, pursuant to § 548 of the United States Bankruptcy Code, as a transfer made for less than reasonably equivalent value. The defendants filed an answer to the trustee's complaint, followed by a motion, accompanied by a brief in support thereof, for judgment on the pleadings. The motion has been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. The plaintiff did not respond within the time required, see, N.D. Ind. L.B.R. B-7007-1(a), and the motion was then taken under advisement. It is that motion which is presently before the court.

Rule 12(c) of the Federal Rules of Civil Procedure, which is made applicable to bankruptcy proceedings by Bankruptcy Rule 7012(b), governs motions for judgment on the pleadings. A motion for judgment on the pleadings is determined by the same standard applied to a motion to dismiss for

failure to state a claim. U.S. v. Wood, 925 F.2d 1580, 1581 (7th Cir. 1991); Thomason v. Nachtrieb, 888 F.2d 1202, 1204 (7th Cir. 1989). The court is required to view the facts presented in the pleadings and the inferences drawn from them in the light most favorable to the non-moving party. Flenner v. Sheahan, 107 F.3d 459 (7th Cir. 1997); Wood, 925 F.2d at 1581; Thomason, 888 F.2d at 1204; In re Amica, Inc., 130 B.R. 792, 796 (Bankr. N.D. Ill. 1991). Consideration of the matter is limited to the pleadings “and all uncontested allegations to which the parties had an opportunity to respond are taken as true.” Flora v. Home Federal Savings and Loan Ass’n, 685 F.2d 209, 211 (7th Cir. 1982). The motion should be granted only if there are no material issues of fact and one party is clearly entitled to judgment. Id. In this respect, the inquiry is much like summary judgment, except that the pleadings are the sole source of the facts the court considers and, unless they would constitute an admission, facts not found in a pleading to which a response is required are disregarded.

When measured by this standard, the defendants’ motion fails. The transfer in question involves the foreclosure of a mobile home by Oak Creek because of an innkeeper’s lien which arose as a result of the debtor’s delinquent lot rent. The defendants contend that reasonably equivalent value was given, as that concept was defined by the Supreme Court in BFP v. Resolution Trust Company, 511 U.S. 531, 114 S. Ct. 1757 (1994). In BFP the Supreme Court held that the price received at foreclosure is reasonably equivalent value for the purposes of § 548, “so long as all the requirements of the State’s foreclosure law have been complied with.” BFP, 511 U.S. at 545. In this instance, those requirements are specified by Indiana law, and, among other things, require that at least ten days notice of the time and place of the sale be given by publication in a newspaper of general circulation in the county in which the property is located and providing the debtor with at least ten days notice of the sale by mailing a copy of the notice to the debtor’s address. See, I.C. 16-

41-27-9; I.C. 32-33-6-1. Although the defendants refer to these requirements in their brief, the uncontested allegations contained in the pleadings say nothing about what was done to comply with them. Without that information the court cannot, based solely on the pleadings, conclude that the sale was made for reasonably equivalent value or that the defendants are entitled to judgment in their favor. The motion for judgment on the pleadings is therefore DENIED.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court