

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN RE: CASE NO. 07-40572)
)
LAFAYETTE NEIGHBORHOOD)
HOUSING SERVICES)
)
Debtor)
)
)
LAFAYETTE NEIGHBORHOOD)
HOUSING SERVICES)
)
Plaintiff)
)
vs.) PROC. NO. 07-4042
)
SALIN BANK AND TRUST COMPANY)
)
Defendant)

DECISION AND ORDER
DENYING MOTION FOR SUMMARY JUDGMENT

At Fort Wayne, Indiana on March 13, 2008.

By this adversary proceeding, the plaintiff/debtor seeks to avoid what it characterizes as a fraudulent transfer, 11 U.S.C. §§ 544, 545, 547 and 548, involving the assignment of seven mortgages which, according to the debtor, were made within one year prior to filing the petition at which time the debtor was insolvent, and for which less than reasonably equivalent value was received. The matter is before the court on the defendant’s motion for summary judgment and responses thereto.

Summary judgment is appropriate where there is “no genuine issue as to any material fact” and “the moving party is entitled to a judgment as a matter of law.” See, Fed. R. Civ. P. Rule 56(c); Fed. R. Bankr. P. Rule 7056. The moving party must initially identify “those portions of ‘the

pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact.” Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553 (1986). Once it does so, the non-moving party must affirmatively demonstrate, by specific factual allegations, that there is a genuine issue of material fact requiring trial. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct 1348, 1356 (1986). In ruling on the motion, the court accepts the non-moving party’s evidence as true, draws all inferences in favor of the non-moving party, and does not weigh the evidence and credibility of the witnesses. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511 (1986).

Having considered the motion for summary judgment, together with the materials submitted in support thereof and in opposition thereto, the court finds that there are genuine issues of material fact as to whether the mortgages were given as security for a debt – as contended by the defendant – or without consideration as argued by the plaintiff. The motion for summary judgment is therefore DENIED.

SO ORDERED.

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