

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN RE: CASE NO. 08-11955	)	
	)	
DFI PROCEEDS, INC.	)	
	)	
Debtor	)	
	)	
DRIGGS FARMS OF INDIANA, INC. by the	)	
UNSECURED CREDITORS' COMMITTEE	)	
	)	
Plaintiff	)	
	)	
vs.	)	PROC. NO. 08-1226
	)	
DRIGGS FARMS INVESTORS, LLC;	)	
HOWARD DRIGGS, JR; AND	)	
ENTERPRISE TITLE AGENCY, INC.	)	
	)	
Defendants	)	

**DECISION AND ORDER DENYING MOTION TO DISMISS**

\_\_\_\_\_ At Fort Wayne, Indiana, on March 2, 2009.

By its complaint in this adversary proceeding, the unsecured creditors' committee seeks to recover fraudulent conveyances. The matter is before the court on a motion to dismiss filed by defendants, Driggs Farms Investors, LLC and Howard Driggs, Jr., pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The motion states that the complaint fails to allege facts necessary to support a claim for a fraudulent transfer, namely that there was a pre-petition transfer which was made for less than reasonably equivalent value or that there is any breach of a fiduciary duty. The current standard governing a motion to dismiss requires that:

First, the complaint must describe the claim in sufficient detail to give the defendant "fair notice of what the . . . claim is and the grounds upon which it rests" . . . Second, its allegations must plausibly suggest that the plaintiff has a right to relief raising the

possibility above a “speculative level”; if they do not, the plaintiff pleads itself out of court. E.E.O.C. v. Concentra Health Services, Inc., 496 F. 3d 773, 776 (7th Cir. 2007) (quoting Bell Atlantic v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1964)(internal citations omitted). See also, In re Eisaman, 387 B.R. 219, 222 (Bankr. N.D. Ind. 2008); In re Schmucker, 376 B.R. 256, 258 (Bankr. N.D. Ind. 2007).

This determination is made based upon the factual allegations in the complaint. In other words, only the complaint may be the focus of the court’s evaluation. Given this focus and the standard established by Twombly, the defendants’ motion is DENIED. The defendants shall file an answer to the plaintiff’s complaint within ten (10) days of this date.

SO ORDERED.

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