IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

LUZ ARMSTRONG, **Plaintiff,** **v.** **MARY RIVERA** **Defendant,** **and** **JOHN J. HODGE,** **Intervenor.**	)	**CIVIL NO. 118/2000** **ACTION FOR DEBT, BREACH OF CONTRACT, IMPLIED TRUST AND DAMAGES**

MEMORANDUM OPINION

THIS MATTER comes before the court on Intervenor John Hodge's Motion to Quash Writ of Execution and Plaintiff Luz Armstrong's Motion to Void Fraudulent Transfer. Specifically, Plaintiff asks this Court to void Defendant Mary Rivera's transfer of a 2001 Chevrolet Cavalier (SN 1G1JF524517300408 Lic. # CBE 780) to Intervenor as a fraudulent conveyance. Intervenor asks this Court to quash a writ of execution attaching said vehicle in order to satisfy Plaintiff's judgment against Defendant and to return the car to him. For the reasons stated below, this Court will deny Plaintiff's motion to void the transfer and grant Intervenor's motion to quash the writ of execution attaching his car.

FACTS AND PROCEDURAL HISTORY

Plaintiff co-signed a promissory note, which enabled defendant, her sister, to obtain a $22,000 loan from Banco Popular de Puerto Rico (Banco Popular). Defendant failed to repay the loan, and as a result Banco Popular successfully sued both Plaintiff and Defendant to recover the loan amount.[1] After obtaining the judgment, Banco Popular executed against Plaintiff's real property, plots 45K and 45L, Estate La Grande Princesse. The Office of the Territorial Court Marshal held an auction sale, where Plaintiff spent $22, 846.63 plus fees to redeem her property. Plaintiff then filed the instant action and received a judgment for that amount on June 8, 2000. In order to satisfy the judgment, defendant's undivided interest in Plot No. 43C and 43B, La Grande Princesse were attached on September 6, 2000 and September 15, 2000, respectively.

The current issue arose on March 18, 2001 when defendant won a 2001 Chevrolet Cavalier in a raffle held at Divi Carina Bay Resort and Casino. On March 24, title to the car was transferred into Defendant's name. On April 3, she prepared an affidavit in which she transferred the car to John Hodge, her boyfriend. That same day, Hodge registered the vehicle in his name. The Territorial Court Marshal subsequently attached the car on May 16, 2000 pursuant to a writ of execution. John Hodge intervened and filed the instant motion to quash the writ of execution against the car and to have it returned to him. Based on the lack of consideration for the transfer, the fact that the transferee is defendant's boyfriend and the fact that there was an unpaid money judgment against defendant, plaintiff seeks to void the transfer as a fraudulent conveyance and to uphold the writ of execution on the car.

DISCUSSION

Under the Uniform Fraudulent Conveyances Act, which the legislature of the Virgin Islands has adopted and codified at Title 28, §§ 201-212, "[e]very conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future

[1] *Banco Popular de Puerto Rico v. Mary Rivera and Luz Armstrong*, Civil No. 10/1997.

creditors." 28 V.I.C. § 207. This Act does not require the fraud to be established by direct evidence, due to the difficulty of meeting such a burden of proof. However, courts applying the Uniform Fraudulent Conveyances Act have recognized that there are certain circumstances which so frequently accompany such conveyances, that they have come to be recognized as indicia or badges of fraud. 37 Am.Jur.2d Fraudulent Conveyances, § 10. Thus, if plaintiff establishes the existence of these badges in the vehicle transfer, she may create a presumption of fraud. Upon such a showing, the burden then shifts to the parties seeking to uphold the transfer to rebut the presumption and sustain the bona fides of the transaction. Williams v. Vialet 19 V.I. 70, 72-73 (D.C.V.I. 1982).

The District Court of the Virgin Islands, interpreting the Uniform Fraudulent Conveyances Act, has designated which of the numerous badges of fraud must be proven by the party seeking to void the conveyance in order to shift the burden of proof. These requirements are:

(a) There must be an actual conveyance of property or assets by the debtor;
(b) The transfer must be made while a suit is pending or in anticipation of a lawsuit;
(c) The transfer must render the transferor insolvent or greatly reduce his estate so that the "present fair salable value of his assets is less than the amount that will be required to pay his probable liability ..." 28 V.I.C. § 202(1); and
(d) The transfer or obligation must be received for less than fair consideration. Id. at 72.

Since a fraudulent conveyance, by definition, is one that is made with intent to hinder, delay or defraud creditors, the transfer in question must impliedly have that effect. This is the theory behind requirement (c), that plaintiff prove that defendant's present, fair salable assets are less than the amount required to pay defendant's liability. Thus, to establish that the transfer was a fraudulent conveyance, Plaintiff must show that Defendant did not have sufficient means to pay her debt apart from the vehicle in question. According to the record, defendant possessed only one asset aside from the vehicle- her interest in Plots 43 B and C of Estate La Grande Princesse. This asset has already been attached, but remains unsold. Plaintiff has not given this Court any guidance as to the "present fair salable value" of this interest. Therefore, since plaintiff had the burden of proving that defendant's property interest will not satisfy the defendant's debt, and she did not do so, this Court must uphold defendant's April 3, 2001 conveyance as a valid transfer.

CONCLUSION

The premises considered, it is hereby

ORDERED that Plaintiff's Motion to Void Fraudulent Transfer is DENIED;

FURTHER ORDERED that Intervener's Motion to Quash Writ of Execution is GRANTED;

IT IS FURTHER ORDERED that the 2001 Chevrolet Cavalier, SN 1G1JF524517300408, be returned to its owner, John J. Hodge.

Dated: July 24th, 2001

Edgar D. Ross
Territorial Court Judge

ATTEST:
DENISE D. ABRAMSEN
Clerk of the Court

By: Chief **Deputy Clerk** 7/25/01