

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

In re

OAKWOOD MARKETS, INC.,
Debtor.

No. 96-20444
Chapter 7

MAURICE K. GUINN, TRUSTEE,
Plaintiff,

vs.

Adv. Pro. No. 98-2016

FLETCHER BRIGHT COMPANY,
Defendant.

M E M O R A N D U M

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MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE

In this adversary proceeding, the chapter 7 trustee seeks to avoid and recover pursuant to 11 U.S.C. §§ 549 and 550 a postpetition payment from the debtor to Fletcher Bright Company ("FBC"). Pending before the court is FBC's motion for summary judgment wherein it asserts that the transfer is not avoidable under § 549(a) because it was authorized by the court. Alternatively, FBC contends that the transfer is unavoidable pursuant to § 549(b) because it gave equivalent value for the transfer postpetition. As discussed below, the motion for summary judgment will be granted, the court having concluded that although the transfer meets the requirements for avoidability under § 549(a) because it was unauthorized, the transfer is protected by the safe harbor provision of § 549(b). This is a core proceeding. See 28 U.S.C. § 157(b)(2)(A).

I.

Prior to the commencement of this case, the debtor owned and operated six retail grocery stores located in northeast Tennessee and southwest Virginia. The debtor's principal creditor was Fleming Companies, Inc. ("Fleming"), the major supplier of its inventory and equipment, to which the debtor owed more than \$2.7 million under certain promissory notes, equipment leases, and open accounts. As security for these

obligations, Fleming held a perfected security interest in virtually all of the debtor's assets, including its inventory, equipment, supplies, machinery, furnishings, fixtures, leasehold interests and improvements, accounts, contract rights, and general intangibles. In December 1995, Fleming declared the debtor in default under the terms of the parties' loan agreements, placed the debtor on C.O.D. basis for the purchase of inventory, and filed suit in state court for the appointment of a receiver to operate the debtor's business. Subsequently, on February 1, 1996, the debtor and Fleming entered into an agreement wherein the debtor agreed, *inter alia*, to a foreclosure sale by Fleming under the Uniform Commercial Code and the appointment of a receiver to operate the debtor's stores pending the sale. A state court receiver was appointed on February 8, 1996, and a bulk sale of the debtor's assets was noticed by Fleming for March 7, 1996.

One of the grocery stores operated by the debtor was located in Kingsport, Tennessee in the Green Acres Shopping Center, leased from Green Acres Joint Venture.¹ On March 5, 1996, FBC,

¹The stipulations of the parties attached as Exhibit A to the motion for summary judgment evidence that Fletcher Bright Company was receiving the rental income from the leased property, although the reason for its involvement is less than clear. The affidavit of Fletcher Bright, Chairman of the Board of the Fletcher Bright Company, attached as Exhibit B states
(continued...)

the leasing agent for Green Acres Joint Venture, received from the debtor's state court receiver a check dated March 1, 1996, in the amount of \$14,202.33 in payment of the March rent for the Green Acres store which was due March 1. FBC deposited the check into its bank account and the check was honored by the debtor's bank on March 7, 1996.

Subsequent to FBC's receipt of the check on March 5, but prior to honor by the debtor's bank on March 7, three unsecured creditors of the debtor filed an involuntary chapter 11 petition against the debtor on March 6, 1996. Fleming immediately responded by filing a motion for relief from the automatic stay to permit the foreclosure sale scheduled for March 7 at 10:00 a.m. to proceed and requested an emergency hearing on the motion. Upon notice to the attorney for the petitioning creditors, a hearing on the stay relief motion was held at 9:00

¹(...continued)

that "the Debtor executed a twenty year lease agreement with myself and James L. Rifkin, doing business as Green Acres Joint Venture, as lessors." A copy of the purported lease dated December 30, 1986, attached to the affidavit, however, recites that Green Acres Joint Venture is "comprised of Jim Gilmore and Norris Johnson" and appears to have been executed by those two individuals. The copy of an amendment to the lease dated November 30, 1986, also attached to the affidavit likewise is signed Messrs. Gilmore and Johnson on behalf of Green Acres Joint Venture. Nonetheless, in the absence of an objection to the affidavit and because of the parties' stipulations, the court will presume that Fletcher Bright Company was the authorized leasing agent for Green Acres Joint Venture.

a.m. on March 7, 1996. At the hearing, Fleming's counsel announced that an agreement allowing the sale to go forward had been reached with the petitioning creditors. The terms of the agreement were announced and upon the conclusion of the hearing, an agreed order was entered. In addition to lifting the automatic stay, the agreed order authorized the debtor and Fleming to take the necessary steps to complete the sale and transfer the assets, including execution of bills of sale. The order also authorized the purchasers of the assets at the various stores to accept assignments of leases for the real properties from which the grocery stores were operated. Under the terms of the agreed order, all sale proceeds were to be paid into the registry of the court pending further orders unless Fleming was the successful bidder, in which event Fleming would pay into the court registry only the proceeds of sale which exceeded the debtor's indebtedness to Fleming. The right of any party in interest to challenge Fleming's security interest and its entitlement to the sale proceeds was expressly preserved.

The foreclosure sale was held as scheduled, with Fleming being the successful bidder. Prior to the sale, Fleming had obtained Green Acres Joint Venture's consent to an assignment and assumption of the Green Acres store lease by the purchaser at the foreclosure sale. Notwithstanding this consent, Fleming

chose not to assume this particular lease, although Green Acres Joint Venture allowed Fleming to continue to operate the Green Acres store in March because the debtor had paid the March rent. Thereafter, Fleming renegotiated the lease terms with FBC and Fleming then assigned the renegotiated lease to a third party.

On April 12, 1996, Fleming filed a report of sale and paid into the court registry excess sale proceeds of \$15,198.00. The report of sale indicates that Fleming paid out of the \$2,763,610.00 in sale proceeds various sums owed to it by the debtor, related attorney fees, and the sum of \$35,465.00 to Oakwood Markets, Inc. for past-due rental payments in connection with the assumption and assignment of a Weber City store lease.²

No response controverting the involuntary chapter 11 petition was filed by the debtor. Accordingly, an order for relief under chapter 11 was entered in the underlying bankruptcy case on April 2, 1996. Upon motion by the petitioning creditors, the case was subsequently converted to chapter 7 by order entered April 18, 1996.

The present adversary proceeding to recover the March 1 rental payment to FBC was commenced by the chapter 7 trustee on

²The prepetition indebtedness of \$35,038.93 allegedly owed to Green Acres Joint Venture for maintenance charges and taxes due under its lease was not paid as that lease was not assumed.

March 6, 1998. FBC filed the pending motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, as incorporated by Fed. R. Bankr. P. 7056, on October 19, 1998. The motion was supported by the parties' stipulations, a memorandum of law and the affidavit of Mr. Fletcher Bright. After obtaining an extension of time, the trustee filed on November 2 a memorandum of law in response to the pending motion, supported by his personal affidavit referencing an attached copy of the "AGREED ORDER LIFTING AUTOMATIC STAY" entered on March 7, 1996. The motion is now ready for resolution.

II.

Summary judgment under Fed. R. Civ. P. 56(c), made applicable to bankruptcy adversary proceedings by Fed. R. Bankr. P. 7056, is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See, e.g., Celotex Corporation v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 2554 (1986). Any inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *See, e.g., McCafferty v. McCafferty (In re McCafferty)*, 96 F.3d 192, 195 (6th Cir. 1996)(citing *Matsushita Elec. Indus. Co. v. Zenith*

Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986)).

Under subsection 549(a) of the Bankruptcy Code,³ a trustee may avoid an unauthorized postpetition transfer of property of the estate, unless it falls within the exceptions set forth in subsections (b) and (c) of section 549. See *Manuel v. Allen (In re Allen)*, 217 B.R. 952, 955 (Bankr. M.D. Fla. 1998) (citing *Geekie v. Watson (In re Watson)*, 65 B.R. 9, 11 (Bankr. C.D. Ill. 1986)). Subsection (b) protects certain otherwise avoidable transfers to the extent value was given in exchange for the transfer. Although as a general rule the trustee as the party seeking to avoid a transfer bears the burden of establishing the requirements for avoidance under 549(a), see, e.g., *Musso v. Brooklyn Navy Yard Dev. Corp. (In re Westchester Tank Fabricators, Ltd.)*, 207 B.R. 391, 396 (Bankr. E.D.N.Y. 1997)(citing *Consolidated Partners Inv. Co. v. Lake*, 152 B.R. 485 (Bankr. N.D. Ohio 1993)); the recipient of the transfer has the burden of proof to the extent it asserts the validity of the

³11 U.S.C. § 549(a) states as follows:

Except as provided in subsections (b) or (c) of this section, the trustee may avoid a transfer of property of the estate—

- (1) that occurs after the commencement of the case; and
- (2)(A) that is authorized only under section 303(f) or 542(c) of this title; or (B) that is not authorized under this title or by the court.

transfer. See Fed. R. Bankr. P. 6001 ("Any entity asserting the validity of a transfer under § 549 of the Code shall have the burden of proof."). Because FBC contends that the transfer in question was authorized by the court and that it comes within the § 549(b) exception to avoidance, FBC bears the burden of proving these affirmative defenses. See 10 COLLIER ON BANKRUPTCY ¶ 6001.01[2] and [3](15th ed. rev. 1998)(although some courts have suggested that Rule 6001 places the burden of proof as to all elements of § 549(a) upon the defendant, more appropriate reading is to place burden only upon defense that transfer was authorized and exceptions under subsections (b) and (c)).⁴

FBC does not dispute that it received a postpetition transfer of estate property and has stipulated this fact. It asserts, however, that the transfer was authorized by the court in the agreed order entered March 7, 1996, wherein the court not only permitted the foreclosure sale to proceed, but also authorized the debtor "to take such other steps as may be

⁴But see *In re Westchester Tank Fabricators, Ltd.*, 207 B.R. at 395 (ignoring Rule 6001 entirely); *Schieffler v. Coleman (In re Beshears)*, 196 B.R. 464, 466 (Bankr. E.D. Ark. 1996)(holding burden of proof is upon recipient as to all elements including whether transfer was of estate property); *Hoagland v. Edward Hines Lumber Co. (In re LWMcK Corp.)*, 196 B.R. 421, 423 (Bankr. S.D. Ill. 1996)(same holding); and *In re Watson*, 65 B.R. at 11 (suggesting that burden of proof is on recipient regarding whether disclaimer of an interest is a transfer of property of the estate).

necessary to complete the foreclosure sale and transfer the assets to the purchasers." One of the assets to be transferred, of course, was the lease with Green Acres. Because the curing of defaults is a prerequisite to the assignment and assumption of leases, FBC argues that the March rent would had to have been paid in order for the lease to be transferred. Thus, the court authorized payment of the March rent when it authorized the debtor "to take such other steps as may be necessary to ... transfer the assets." Alternatively, FBC contends that the payment is unavoidable because it comes within the safe harbor of § 549(b)⁵ since FBC gave value in the form of lease space in exchange for the transfer.

III.

FBC's authorization argument was made by the defendant in *Maurice K. Guinn, Trustee, vs. Oakwood Properties, Inc.* (Adv.

⁵This subsection provides as follows:

In an involuntary case, the trustee may not avoid under subsection (a) of this section a transfer made after the commencement of such case but before the order for relief to the extent any value, including services, but not including satisfaction or securing of a debt that arose before the commencement of the case, is given after the commencement of the case in exchange for such transfer, notwithstanding any notice or knowledge of the case that the transferee has.

11 U.S.C. § 549(b).

Pro. No. 98-2027), and rejected by the court in its memorandum opinion filed on July 27, 1998.⁶ That adversary proceeding was brought by the trustee to avoid and recover postpetition March rent payments which occurred on March 7, 1996, for the debtor's leased premises in Weber City, Virginia. The court found no factual basis for the defendant's assertion that the transfers therein were authorized by the court either at the hearing on Fleming's stay relief motion or in the agreed order generated as a result of the hearing. As stated by the court in the *Oakwood Properties* opinion:

As a copy of the transcript attached ... plainly indicates, there was no discussion at the March 7 hearing regarding payment of the March rent Instead, the only discussion at the hearing concerned the agreement which had been reached between Fleming and the petitioning creditors; that the scheduled sale had been advertised for some time and substantial harm could come to the creditors of the debtor through the continued deterioration of the business if the sale were not allowed to proceed; that all sale proceeds would be paid into court unless Fleming were the successful bidder in which case Fleming would only pay in the proceeds in excess of its debt; and that the proposed agreed order would provide the debtor and Fleming the authority to take whatever actions were necessary in connection with the sale, such as execution of documents necessary to convey good title and assignments of leases.

Furthermore, the agreed order entered on March 7 contained no such authorization. The order simply

⁶The court is aware that both parties appeals of the final order entered in *Trustee vs. Oakwood Properties, Inc.* is pending before the district court.

lifted the automatic stay to allow Fleming to proceed with its sale and authorized the debtor and Fleming to execute bills of sale to transfer title of the assets and to take such other steps as were necessary to complete the foreclosure sale and transfer the assets to the purchasers. The order also authorized the purchasers of the assets at the various stores to accept assignments of leases on the real properties and recited that such assignments were valid and enforceable.

Memorandum Opinion at pp. 13-14.

This court similarly concludes in the present case that the evidence does not support FBC's assertion that the court authorized the debtor to pay the March rent. Although clearly the debtor was authorized to assign its leases, no specific authority was granted to pay any rentals or otherwise cure any rent arrearages. To the contrary, all of the sale proceeds with the exception of the amount owed Fleming were to be paid into the court registry. The general authorization permitting the debtor and Fleming to take the steps necessary to transfer the assets can not be construed to warrant payment of any past-due rentals in light of the court's specific directive regarding the disposition of the sale proceeds. Based on the parties' stipulations and the court's conclusion that the transfer to FBC was not authorized, the requirements for an avoidable postpetition transfer under § 549(a) have been established.

Next, the court turns to FBC's alternative contention that the transfer is excepted from avoidance under § 549(b) because

it gave value in the form of lease space in exchange for the transfer. Subsection 549(b) provides that "in an involuntary case, the trustee may not avoid ... a transfer made after the commencement of such case but before the order for relief to the extent any value, including services, but not including satisfaction or securing of a debt that arose before the commencement of this case, is given after the commencement of the case in exchange for such transfer" The time between the filing of the petition for involuntary bankruptcy and the order of relief is commonly known as the "gap period." *Yancey v. Varner (In re Pucci Shoes, Inc.)*, 120 F.3d 38, 41 (4th Cir. 1997). Under § 549(b), a transfer of property of the estate made during the gap period in exchange for value (including services, but not satisfaction of a prepetition debt) may not be avoided by a bankruptcy trustee, notwithstanding the otherwise avoidability of the transfer under § 549(a). *Id.* Because the transfer in question occurred when the check was honored on March 7, 1996, it falls within the gap period which commenced on March 6 when the involuntary petition was filed and ended on April 2, 1996, upon entry of the order for relief.

Like the defendant in *Trustee v. Oakwood Properties, Inc.*, FBC asserts that the value given in exchange for the rental payment was the right to occupy the leased premises for the

month of March. In response, the trustee notes that the value specified in § 549(b) which is sufficient to protect otherwise avoidable transfers must be given postpetition and does not include "satisfaction or securing of a debt that arose before the commencement of the case." The trustee maintains that the only value given by Oakwood, the right to use and possess the leased space, was conveyed prepetition when the lease agreement was signed on December 30, 1986, rather than "after the commencement of the case" as required by § 549(b), and that because the rent payment was made pursuant to a prepetition lease agreement, the value given was an impermissible "satisfaction ... of a debt that arose before the commencement of the case." Alternatively, the trustee argues that if postpetition value were given at all, it only covered two days, March 6 and 7, 1996, because the debtor lost its occupancy rights as a result of the March 7, 1996, foreclosure sale.

To a certain extent the trustee is correct that the debtor's interest in the leased premises was obtained prepetition. That grant, however, was not absolute or unconditional, but was subject to the debtor making the rental payments in the manner and amount specified in the lease. "An essential characteristic of a lease is that in return for payment of rent, the lessee has a right to use or possess the leased property." *Speciner v.*

Gettinger Assoc. (In re Brooklyn Overall Co.), 57 B.R. 999, 1003 n.4 (Bankr. E.D.N.Y. 1986). If the debtor ceased making rental payments, the concomitant right to occupy the leased premises terminated.

The same reasoning explains why providing rental space for the operation of the debtor's business is more comparable to services than satisfaction of a prepetition debt. Although the court has been unable to find any cases precisely on this issue, the cases which have addressed the value aspect of § 549(b) have distinguished between situations where the transferee provides benefit in exchange for payment with those where payment is made on an existing obligation in which value has already been fully received. See *Spear v. Cema Distrib. (In re Rainbow Music, Inc.)*, 154 B.R. 559, 563 (Bankr. N.D. Cal. 1993)(in dicta, court held that transferee would have established value if proof of postpetition release of security interest had been offered); *Shaia v. Conoco, Inc. (In re Williams Contract Furniture, Inc.)*, 148 B.R. 805, 808 (Bankr. E.D. Va. 1992)(payment of prior month's gasoline credit purchases was satisfaction of prepetition debt); *Cossitt v. First American State Bank (In re Ft. Dodge Creamery Co.)*, 121 B.R. 831, 835 (Bankr. N.D. Iowa 1990)(Bank's agreement to postpone demand or collection on the promissory note was not "value" within the meaning of 11 U.S.C.

§ 549(b)); and *In re Brooklyn Overall Co.*, 57 B.R. at 1003 (absolving debtor from rent deficiency was mere satisfaction of prepetition debt absent debtor's ability to occupy leased premises). "Section 549(b) is intended to protect contemporaneous exchanges for value to permit continued operation of the business during the 'gap' period." *In re Ft. Dodge Creamery Co.*, 121 B.R. at 835. Payment of monthly rent in exchange for the right to occupy the leased business premises so the debtor's business operations can continue would appear to be precisely the type of value contemplated by § 549(b).⁷

⁷Congress has recognized in other contexts that a landlord provides services not only upon execution of the lease but throughout the life of the lease in the form of permitting a lessee to occupy the leased premises. 11 U.S.C. § 365(d)(3) requires a trustee to timely perform all the obligations of a debtor arising from and after the order for relief under any unexpired lease of nonresidential real property until the lease is assumed or rejected. In the legislative history, Senator Dole explains the reasoning behind this provision:

[D]uring the time the debtor has vacated space but has not yet decided whether to assume or reject the lease, the trustee has stopped making payments due under the lease. These payments include rent due the landlord and common area charges which are paid by all the tenants according to the amount of space they lease. In this situation, the landlord is forced to provide current services—the use of its property, utilities, security, and other services—without current payment.

No other creditor is put in this position.

130 CONG. REC. S8894-95 (daily ed. June 29, 1984)(floor statement of Sen. Dole). Furthermore, if the trustee in the present case is correct in his assertion that all of the value given by a landlord is provided upon execution of a lease, the same
(continued...)

The trustee's alternative argument, that if value were given postpetition it does not exceed the value of two days occupancy, was also addressed in the court's *Oakwood Properties* memorandum opinion:

The trustee's argument ... is based on the premise that value must be measured from the debtor's or estate's perspective. Nothing, however, in § 549(b) limits value to that realized by the estate. Instead, § 549(b) focuses on the transferee's frame of reference since it provides an exception for "value ... given ... in exchange for such transfer." See *Hamilton v. Lumsden (In re Geothermal Resources Int'l, Inc.)*, 93 F.3d 648, 652 (9th Cir. 1996), on remand 1998 WL 169683 (N.D. Cal. 1998); and *Allen v. Rib Detention Equip., Inc., (In re Roanoke Iron & Bridge Works, Inc.)*, 98 B.R. 256, 259-260 (Bankr. W.D. Va. 1988). See also *Nadel v. Fruitville Pike Assoc. (In re Burke)*, 60 B.R. 665, 670 (Bankr. D. Conn. 1986)(intent of § 549(b) exception is "to return the transferee to the economic position he was in before the transfer"); but see *McManus, Stewart, Ferraro & Schwarz, P.A. v. Bakst (In re Sanchez-Casis)*, 99 B.R. 115, 117 (Bankr. S.D. Fla. 1989)("The obvious legislative purpose of § 549(b) is to give credit to a transferee to the extent that the bankrupt estate has received equivalent value for the transfer and, therefore, has not been depleted.").

If value is to be measured from only the debtor's perspective, it would have been more logical for Congress to use the word "received" instead of "given" so that § 549(b) reads "value received in exchange for

⁷(...continued)

analysis would suggest that no obligations arise postpetition on a prepetition lease—they all arose prepetition upon execution of the lease. Such a conclusion, however, would render § 365(d)(3) meaningless. See *Matter of F & M Distributors, Inc.*, 197 B.R. 829, 832 (Bankr. E.D. Mich. 1995)("that could not be what Congress meant").

the transfer." Since the precise language chosen by Congress focuses on value from the giver's perspective and there is no indication in the legislative history to § 549(b) suggesting that this interpretation is at odds with the intention of Congress in enacting this legislation [footnote omitted], the court will examine the issue from the viewpoint of the value given by [the lessor].

Memorandum Opinion at pp. 16-18.

In his current brief, the trustee states that measuring value from the estate's perspective "is not a novel concept in the Code," and points to 11 U.S.C. §§ 548 and 503 as examples of value being measured from the estate's viewpoint. Despite the trustee's contention that value should be uniformly measured from the estate's perspective throughout the Bankruptcy Code, Congress did not choose to provide such a statutory application of value as the trustee suggests. While the trustee is correct that value is measured from the estate's perspective under § 548(a),⁸ it must be noted that § 548(a)(1)(B)(i) expressly requires that value be measured from the debtor's perspective by use of the word "received." See *Consove v. Cohen*, 701 F.2d 978, 982 (1st Cir. 1983)(proposition of transferee that measure of value he forfeited was correct measure of value rather than what

⁸Section 548(a) allows the trustee to avoid fraudulent transfers made within one year preceding the bankruptcy if, *inter alia*, "the debtor ... received less than a reasonably equivalent value in exchange for such transfer." 11 U.S.C. § 548(a)(1)(B)(i).

value the debtor received ignores clear language of section). In contrast, § 549(b) includes the phrase "value given in exchange for the transfer," which as discussed above measures value from the viewpoint of the giver.

The trustee's cite to § 503 which provides for the allowance of administrative expenses is similarly not pertinent. The requirement that an administrative expense benefit the estate does not derive from any statute under the Bankruptcy Code. Rather, it is a standard found in pre-Code case law interpreting the predecessor to § 503(b)(1)(A).⁹ See 4 COLLIER ON BANKRUPTCY ¶ 503.06[3][b] (15th ed. rev. 1998). A general benefit requirement to the estate which the courts have imposed under one particular statute provides no guidance when construing specific statutory language regarding value under § 549(b).

The court notes that other sections of the Bankruptcy Code expressly measure value from the perspective of the transferee rather than from the estate, and are in fact more closely analogous to § 549(b)'s safe harbor provision. For instance, under 11 U.S.C. § 548(c)¹⁰ an otherwise fraudulent conveyance is

⁹Section 503(b)(1)(A) provides that "there shall be allowed administrative expenses ... including ... the actual, necessary costs and expenses of preserving the estate"

¹⁰Section 548(c) states that "a transferee ... of such a transfer ... that takes for value ... has a lien on or may
(continued...)"

protected to the extent a good faith transferee "gave value to the debtor in exchange for such transfer." Similarly 11 U.S.C. § 547(c) excludes from avoidance certain preferential transfers based on "new value given" by the creditor. See 11 U.S.C. § 547(c)(1),(3),(4), and (5). Without question, the value in the foregoing provisions is based on the value conveyed by the creditor, not the benefit realized by the estate.

In the present case, the value given by FBC in exchange for payment of the March rent, i.e., the *quid pro quo*, was the unfettered right to occupy the Green Acres Shopping Center grocery store premises during the month of March. The fact that the debtor occupied the premises for only two days postpetition is irrelevant since FBC made no effort to recover the consideration it gave for the transfers by taking possession of the leased premises after the debtor's occupation terminated. Accordingly, the value given by FBC was the worth of one month's rental of the leased premises and FBC is entitled to judgment in its favor if this value is reasonably equivalent or not disproportionate to the amount of the transfer, \$14,202.33. See *Allen v. Rib Detention Equip., Inc. (In re Roanoke Iron & Bridge*

¹⁰(...continued)
retain any interest transferred ... to the extent that such transferee ... gave value to the debtor in exchange for such transfer."

Works, Inc.), 98 B.R. 256, 261 (Bankr. W.D. Va. 1988)(quoting WEBSTER'S NEW COLLEGIATE DICTIONARY (1977 ed.)("Value is defined as 'a fair return or equivalent in goods and services or money for something exchanged, the monetary worth of something.'")). The parties having stipulated that the "rental value for March 1996 of the premises located in the Green Acres Shopping Center leased by the Debtor was \$14,202.33," FBC is entitled to summary judgment on this issue.

IV.

In conclusion, FBC's motion for summary judgment will be granted because the transfer is excepted from avoidance under 11 U.S.C. § 549(b). An order to this effect will be entered contemporaneously with the filing of this memorandum opinion.

FILED: December 4, 1998

BY THE COURT

MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE