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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

D. STEPHEN SORENSEN, an individual,

Plaintiff,

vs.

NEW KOOSHAREM CORPORATION, a Delaware corporation; and ANCHORAGE CAPITAL GROUP, LLC, a New York limited liability company,

Defendants.

NEW KOOSHAREM CORPORATION, a Delaware corporation; KOOSHAREM, LLC, a limited liability company,

Counter-Plaintiffs,

vs.

D. STEPHEN SORENSEN, an individual.

Counter-Defendant.

Case No. 2:15-cv-01088 RGK (PJWx)

[PROPOSED] ORDER DENYING SORENSEN'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Judge: Hon. R. Gary Klausner
Ctm: 850
Date: February 8, 2016
Time: 9:00 a.m.

1 Upon consideration of Plaintiff and Counter-Defendant D. Stephen Sorensen’s
2 (“Sorensen”) Motion for Partial Summary Judgment, Defendant New Koosharem
3 Corporation’s (“Koosharem”) Opposition thereto, along with supplemental briefing
4 or oral argument, if any, it is hereby ORDERED that the Motion be denied in its
5 entirety.

6 This Court previously held that Koosharem’s allegations regarding the SDP
7 Transfers “satisfied the elements necessary to allege a constructive fraudulent
8 transfer” because Koosharem alleged: (1) that SDP was indebted to Koosharem prior
9 to the SDP Transfers; (2) SDP transferred the \$2.7 million to Esperer without
10 receiving anything in exchange; and (3) SDP was insolvent at the time of the SDP
11 Transfers, or became insolvent as a result of the transfer. Civil Minutes re
12 Sorensen’s Motion to Dismiss Counterclaims, at 8 (Dkt. No. 87) (citing Cal. Civ.
13 Code § 3439.05).

14 Koosharem was plainly injured by the SDP Transfers because the \$2.7 million
15 transferred to Esperer otherwise would have been subject to the payment of SDP’s
16 debt to Koosharem. *Mehrtash v. Mehrtash*, 93 Cal. App. 4th 80 (2001) (“[A] creditor
17 has been injured [if] the transfer puts beyond [her] reach property [she] otherwise
18 would be able to subject to the payment of [her] debt.”).

19 Moreover, where (as here) the three elements of a constructive fraudulent
20 transfer are satisfied under the UFTA, there is no an additional “injury” requirement.
21 *Fidelity National Title Insurance Co. v. Shroeder*, 179 Cal. App. 4th 841 (2009) (“In
22 order for a fraudulent transfer to occur, there need only be “a *transfer* of an *asset* as
23 defined in the UFTA.”). The \$2.7 million transferred from SDP is clearly an asset.
24 “‘Asset’ means ‘property of a debtor, but the term does not include, the following:
25 [¶] (1) Property to the extent it is encumbered by a valid lien. [¶] (2) Property to the
26 extent it is generally exempt under nonbankruptcy law.’” *Id.* (citing Cal. Civ. Code
27 § 3439.01(a)(1), (2)). There were no encumbrances on the \$2.7 million and the \$2.7
28 million in cash was not exempt from the bankruptcy process.

1 The standard for fraudulent transfer is whether or not there is a “continuous
2 nature of the risk faced by the creditor,” but whether the debtor is insolvent. *See Cal.*
3 *Civ. Code § 3439.05; In re Bushey*, 210 B.R. 102 (6th Cir. BAP 1997). Thus,
4 whether or not SDP consistently paid its bill on time is irrelevant. Even if it were
5 relevant, there is a genuine issue of fact as to whether SDP has consistently paid its
6 bills on time, and therefore summary judgment should be denied.

7 It is not inequitable to enter judgment against Sorensen because California
8 UFTA § 3439.08(b) permits a creditor to “recover judgment for the value of the asset
9 transferred” from “[t]he first transferee of the asset or the person for whose benefit
10 the transfer was made.” Sorensen did not return the \$2.7 million, nor can he show
11 good faith because he is the chief architect of the SDP transfers by his own
12 admission. Moreover, the UFTA does not require that Koosharem “demand”
13 payment from SDP before entering judgment against Sorensen. In any event, such
14 demand would be futile as SDP is insolvent and unable to repay amounts due to
15 Koosharem.

16 The sole shareholder rule does not apply in this case because, at a minimum,
17 there is a genuine dispute of fact as the List of Equity Holders filed with the
18 Bankruptcy Court indicates that Sorensen was not NKC’s sole shareholder at the
19 time of the SDP Transfers.

20 Moreover, the sole shareholder rule does not apply once a company files for
21 bankruptcy. Property of the bankruptcy estate “is not property of the debtor or debtor
22 in possession.” *In re Sia*, 349 B.R. 640, 652 (Bankr. D. Haw. 2006); *see also In re*
23 *Hoang*, 449 B.R. 850, 856 (Bankr. D. Md. 2011) (“On the petition date, the
24 Properties became property of the estate, and the Debtor personally lost all legal and
25 equitable interest in them.”). Additionally, the sole shareholder rule only applies to
26 the corporation that the sole shareholder owns. Sorensen does not own SDP so the
27 sole shareholder rule does not apply to transfers by Sorensen from SDP.
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1 Finally, the sole shareholder rule does not apply to the Trishan judgment
2 because since the bankruptcy restructuring, Koosharem has incurred additional
3 liabilities arising from Sorensen’s conversion of the \$4 million judgment. *Anderson*
4 *v. Benson*, 394 N.W.2d 171, 175 (Minn. Ct. App. 1986) (indicating that the sole
5 shareholder rule does not apply where, as here, the corporation incurred “additional
6 unforeseen liability” as a result of the shareholder’s conduct).

7 Accordingly, Sorensen’s Motion for Partial Summary Judgment is denied in
8 its entirety.

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10 IT IS SO ORDERED.

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12 Dated:

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Hon. Judge R. Gary Klausner
United State District Court, Central District
of California

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