

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

BROOKWORTH PARTNERS, L.P.

Appellant

v.

FRANKFORD MACHINERY, INC.,
NICHOLAS KASHKASHIAN, JR., AND
RONALD KASHKASHIAN

Appellees

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2967 EDA 2016

Appeal from the Order Dated August 23, 2016
In the Court of Common Pleas of Delaware County
Civil Division at No(s): 2013-08010

BEFORE: DUBOW, J., SOLANO, J., and FORD ELLIOTT, P.J.E.

MEMORANDUM BY SOLANO, J.:

FILED SEPTEMBER 26, 2017

Appellant Brookworth Partners, L.P., appeals from the judgment entered in favor of Appellees Frankford Machinery, Inc., Nicholas Kashkashian, Jr., and Ronald Kashkashian in Appellant's action claiming a fraudulent transfer in violation of the Pennsylvania Uniform Fraudulent Transfer Act ("PUFTA"), 12 Pa.C.S. §§ 5101-5110. After careful review, we affirm.

Frankford Associates, Inc., though no longer an entity and not a party to this litigation, is central to Brookworth's claim. Frankford Associates was a Pennsylvania corporation which began operating in 1966. Trial Ct. Op., 11/29/16, at 4. It was a family business founded by Arson Kashkashian, who was the sole shareholder until his death. N.T., 4/14/16, at 59. Arson had two

sons who became involved in the business, Ronald Kashkashian and Nicholas Kashkashian, Sr. **Id.** Ronald was initially a salesman for Frankford Associates; after Arson's death in 2006, he became a shareholder, director, and officer; and after Nicholas Sr.'s death in 2009, he became president. **Id.** at 22, 59-60. Nicholas Sr. had two sons, Nicholas Kashkashian, Jr. and Eric Kashkashian, who succeeded to his ownership interest in the company. **Id.** at 60. By 2011, Nicholas Jr. was an employee, shareholder, director, and officer of Frankford Associates. **Id.** at 60, 63-64.¹

Frankford Associates' main business was servicing commercial dry-cleaning equipment and selling replacement parts for such equipment. Trial Ct. Op. at 5. It had four employees, including a parts manager, two service technicians, and a receptionist. N.T. at 23, 63. By the 1990's, Frankford Associates had also begun selling turn-key dry-cleaning operations, for which it would guarantee leases of rental properties. **Id.** at 23, 25, 62.² This aspect of its business accumulated significant debts. **Id.** at 43-45; Brookworth's Ex. 11 (bankruptcy schedules showing \$938,068.31 of debt was primarily comprised of commercial real estate leases).

¹ Ronald testified that Nicholas Jr. was a 25% shareholder of Frankford Associates at the time of trial. N.T. at 23. However, the 2011 federal income tax return for Frankford Associates (covering the period July 1, 2011 through June 30, 2012) shows that Ronald and Nicholas Jr. were both 50% owners of Frankford Associates the year it went out of business. Brookworth's Ex. 5.

² Ronald Kashkashian described this portion of the business as "industry package plants where they would take a lease on a particular property, build out the facilities, find a buyer." N.T. at 23.

In 2002, Ronald and Nicholas Sr. opened defendant-Appellee Frankford Machinery, Inc., another Pennsylvania corporation. N.T. at 24.³ Its main area of business was selling commercial dry cleaning and laundry equipment, for which Ronald would solicit customers “door to door.” *Id.* at 24-25, 59, 78. Both Ronald and Nicholas Jr. are now employees, directors, and officers of Frankford Machinery. *Id.* at 58, 82-83, 148. Ronald owns 50% of the company, and Nicholas Jr. owns 25%. *Id.* at 58.⁴ Ronald is president. *Id.*

Both businesses maintained their respective corporate offices and warehouses at 4500 Torresdale Avenue in Philadelphia, where they shared such common business resources as a telephone number, receptionist, stationary, and computers. Trial Ct. Op. at 4-5; N.T. at 30. Both businesses were insured by a single common property and casualty commercial insurance policy. Trial Ct. Op. at 5. They filed separate tax returns, used separate billing systems, and used separate letterheads. N.T. at 80-81. The businesses served many of the same customers, Trial Ct. Op. at 5, and the two companies would often refer customers to each other — for example,

³ At the time that it opened, Ronald and his brother were the only two employees of Frankford Machinery. N.T. at 24. It is unclear how many employees Frankford Machinery has subsequently employed.

⁴ Eric Kashkashian, Nicholas Jr.’s brother, owns the remaining 25% of Frankford Machinery, but is not active in the business. N.T. at 58.

Frankford Machinery would refer customers who needed their equipment repaired to Frankford Associates. N.T. at 79-80, 155-56.

Brookworth is a landlord (or a successor in interest to a landlord) under a commercial lease agreement for which Frankford Associates was guarantor. Trial Ct. Op. at 2. After Brookworth's tenant (Frankford Associates' customer) defaulted on the lease, Brookworth sued Frankford Associates and obtained a judgment in the amount of \$249,100 on June 5, 2011. ***Id.***

In mid-August 2011, Brookworth executed on a bank account belonging to Frankford Associates and collected \$117,422.60 against its judgment. Trial Ct. Op. at 2. Frankford Associates then began borrowing money from Frankford Machinery in order to continue operating. ***Id.***

On December 31, 2011, Frankford Associates closed. Trial Ct. Op. at 3. At that point, it owed Frankford Machinery \$133,000. ***Id.*** Frankford Associates transferred its remaining physical property, including office furniture and fixtures, a van, a truck, office computers, and old or used dry cleaning or laundry equipment, to Frankford Machinery for a loan reduction of \$83,000. ***Id.***; N.T. at 65-69. After December 31, 2011, Frankford Machinery began to service commercial laundry and dry-cleaning equipment and sell replacement parts (the business in which Frankford Associates had engaged). ***Id.*** at 81.

On February 25, 2013, Frankford Associates filed for bankruptcy. Trial Ct. Op. at 3. Brookworth was listed in the proceeding as one of Frankford Associates' unsecured creditors, as was Frankford Machinery. ***Id.*** The bankruptcy schedules listed one asset: receivables due from "Premier Cleaners" in the amount of \$13,207.33, which was indicated to be in litigation; they listed liabilities of \$938,068.31. Brookworth's Ex. 11. On May 21, 2013, the appointed bankruptcy trustee filed his final report with the bankruptcy court. Trial Ct. Op. at 4. The report confirmed that there was no property available for distribution to creditors, ***id.***; the amount due from Premier Cleaners was described as an abandoned asset. Defendants' Ex. 2. The trustee's report was adopted by the court, and on June 3, 2013, the bankruptcy proceedings were concluded. Trial Ct. Op. at 4.

On July 15, 2014, Brookworth filed the complaint in the instant case.⁵ In the complaint, Brookworth claimed that Frankford Associates violated the PUFTA when it transferred "assets" to Frankford Machinery after Frankford Associates was insolvent (or was rendered insolvent by the transfer), at a time when Brookworth was a creditor of Frankford Associates, and without receiving reasonably equivalent value from Frankford Machinery. Compl., 7/15/14, at ¶¶ 25-28. Brookworth alleged that the assets were transferred "to insulate Franklin [*sic*] Associates from the claims of creditors such as

⁵ Brookworth initiated the case on August 14, 2013, and conducted pre-complaint discovery.

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