487 F.3d 295
United States Court of Appeals,
Fifth Circuit.

SECURITIES AND EXCHANGE COMMISSION; et al., Plaintiffs,
Lawrence J. Warfield, as Receiver for International Education Research Corporation, Plaintiff–Appellee,
v.
RESOURCE DEVELOPMENT INTERNATIONAL, LLC; et al., Defendants,
M&M Engraving and Manufacturing Co.; Anthony Martella, Defendants–Appellants.

Nos. 05–10597, 05–11484.
|
May 18, 2007.

Synopsis

Background: Receiver appointed to manage assets of corporation that had been operated as Ponzi scheme, after assets of Ponzi organizer were frozen in lawsuit brought by the Securities and Exchange Commission (SEC), sued to avoid, on state law fraudulent transfer theory, a wire transfer from account of corporation that had been placed in receivership in repayment of sums previously advanced to pay Ponzi organizer's legal fees. The United States District Court for the Northern District of Texas, Jerry L. Buchmeyer, J., 2005 WL 233802, entered judgment in favor of receiver, and appeal was taken.

Holdings: The Court of Appeals, E. Grady Jolly, Circuit Judge, held that:

[1] under Texas law, fact that debtor-transferor was being operated as Ponzi scheme at time of challenged transfer was itself sufficient to establish that transfer was made with actual intent to defraud its creditors;

[2] wire transfer was not supported by any "reasonably equivalent value," and was also avoidable on constructive fraudulent transfer theory;

[3] transferee could not successfully assert "good faith" defense;

[4] corporate veil could be pierced so as to hold corporate principal personally liable in connection with funds that were fraudulently wired to corporate account; and

[5] dischargeability issue was not ripe for adjudication.

Affirmed in part, vacated in part and remanded.

West Headnotes (15)

[1] Federal Courts
Questions of Law in General

Federal Courts
"Clearly erroneous" standard of review in general

On appeal, district court's findings of fact will be upheld unless they are clearly erroneous, while its legal conclusions are reviewed *de novo*.

2 Cases that cite this headnote

[2] Fraudulent Conveyances
Elements of fraud in general

To avoid transfer under the Texas Uniform Fraudulent Transfer Act (TUFTA) as actually fraudulent to creditors, court must find fraudulent intent only on part of debtor-transferor; whether transferees knowingly participated in that fraud is irrelevant for purposes of establishing the premise of, as opposed to liability for, fraudulent transfer. V.T.C.A., Bus. & C. § 24.005(a)(1).

35 Cases that cite this headnote

[3] **Fraudulent Conveyances**
Intent

Under Texas law, fact that debtor-transferor was being operated as Ponzi scheme at time of challenged transfer was itself sufficient to establish that transfer was made with actual intent to defraud its creditors, for fraudulent transfer avoidance purposes. V.T.C.A., Bus. & C. § 24.005(a)(1).

38 Cases that cite this headnote

[4] **Corporations and Business Organizations**
Conveyances When Insolvent or in Contemplation of Insolvency

Wire transfer made by corporation that was being operated as Ponzi scheme, at time when it was insolvent, to another corporation controlled by individual who had paid legal fees of organizer of this Ponzi scheme, in repayment of this fee advance, was not supported by any "reasonably equivalent value," and was avoidable by receiver of the transferring corporation under constructive fraud provision of the Texas Uniform Fraudulent Transfer Act (TUFTA); transferring corporation's net worth was diminished by this wire transfer, and its defrauded creditors received no benefit from funding of legal defense of individual who organized Ponzi scheme. V.T.C.A., Bus. & C. § 24.005(a)(2).

31 Cases that cite this headnote

[5] **Fraudulent Conveyances**
Sufficiency in general

Primary consideration for court, in analyzing what value was received in exchange for transfer challenged as constructively fraudulent to creditors under Texas law, is the degree to which debtor-transferor's net worth was preserved. V.T.C.A., Bus. & C. § 24.005(a)(2).

9 Cases that cite this headnote

[6] **Fraudulent Conveyances**
Sufficiency in general

Value which debtor receives for transfer challenged as constructively fraudulent to its creditors under Texas law is to be determined in light of the Texas Uniform Fraudulent Transfer Act's (TUFTA's) purpose, i.e., to protect creditors; consideration that has no utility from creditor's viewpoint does not satisfy statutory definition of "value." V.T.C.A., Bus. & C. § 24.005(a)(2).

8 Cases that cite this headnote

[7] **Fraudulent Conveyances**
Nature and amount of consideration

Under Texas law, defendant may prevent recovery of fraudulently transferred assets by proving that transfers were received in good faith and in exchange for reasonably equivalent value. V.T.C.A., Bus. & C. § 24.005.

10 Cases that cite this headnote

[8] **Fraudulent Conveyances**
Nature and amount of consideration

Under Texas law, finding that transfer was not only actually, but also constructively, fraudulent to creditors, and was thus effected for less than reasonably equivalent value, prevented transferee from successfully asserting "good faith" defense to recovery of transferred funds. V.T.C.A., Bus. & C. § 24.005.

4 Cases that cite this headnote

[9] **Corporations and Business Organizations**
Reasons and Justifications
Corporations and Business Organizations
Alter ego in general

Under Texas law, "alter ego" theory applies when there is such unity between corporation and individual that separateness of corporation has ceased and holding only the corporation liable would result in injustice.

10 Cases that cite this headnote

[10] **Corporations and Business Organizations**
Factors Considered

Under Texas law, whether corporation and individual are "alter egos" is shown from their total dealings, including degree to which corporate formalities have been followed and corporate and individual property has been kept separately, amount of financial interest, ownership and control that individual maintains over corporation, and whether corporation has been used for personal purposes.

4 Cases that cite this headnote

[11] **Corporations and Business Organizations**
Alter ego in general

"Alter ego" theory is not only basis for piercing corporate veil under Texas law.

7 Cases that cite this headnote

[12] **Corporations and Business Organizations**
Fraud or illegal acts in general
Corporations and Business Organizations
Alter ego in general

Under Texas law, corporate veil is pierced: (1) when a corporation is alter ego of its owners or shareholders; (2) when corporation is used for illegal purpose, and (3) when corporation is used as sham to perpetrate fraud.

10 Cases that cite this headnote

[13] **Federal Courts**
Grounds for sustaining decision not relied upon or considered

Court of Appeals will not reverse district court's judgment if district court can be affirmed on any ground, regardless of whether district court articulated that ground.

1 Cases that cite this headnote

[14] **Corporations and Business Organizations**
Evasion or violation of law or orders in general

Under Texas law, corporate principal's use of corporate account in order to pay legal fees of friend who had organized Ponzi scheme, after this friend's assets were frozen, upon understanding that friend would immediately effect wire transfer from another account that he controlled in order to repay this fee advance, involved use of corporate form for illegal purpose, i.e., to assist friend in circumventing freeze order, and supported district court's decision to pierce corporate veil to hold corporate principal personally liable in connection with funds that were fraudulently wired to this corporate account to injury of transferor's creditors.

1 Cases that cite this headnote

[15] **Federal Courts**
Bankruptcy

> Determination as to dischargeability of party's debt for judgment entered against him in fraudulent transfer avoidance action was premature, until such time as party filed for bankruptcy; until that time, dischargeability issue was not ripe for adjudication. 11 U.S.C.A. § 523(a).
>
> Cases that cite this headnote

Attorneys and Law Firms

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Appeals from the United States District Court for the Northern District of Texas.

Before JONES, Chief Judge, and JOLLY and STEWART, Circuit Judges.

Opinion

***298** E. GRADY JOLLY, Circuit Judge:

After Benjamin Cook's ("Cook") assets were frozen in conjunction with a pending lawsuit by the Securities and Exchange Commission, Anthony Martella ("Martella") agreed with Cook to pay Cook's lawyers $60,000 from his company's corporate account in exchange for immediate reimbursement arranged by Cook. Immediately after completing the payments to Cook's lawyers, Martella's company, M&M Engraving and Manufacturing Co. ("M&M"), received a wire transfer from International Education Research Corporation ("IERC") for the identical amount. IERC was subsequently placed in receivership. The receiver, Warfield, sued Martella and M&M seeking return of the $60,000 payment that M&M had received from IERC on a theory of fraudulent transfer. After a bench trial, the district court concluded that the $60,000 payment was a fraudulent transfer and found Martella and M&M jointly and severally liable for its repayment. The district court declared that the judgment would be nondischargeable in bankruptcy.

On appeal Martella and M&M (collectively "the Defendants") challenge the district court's holdings as to liability and nondischargeability. The receiver concedes that the district court's ruling on nondischargeability in bankruptcy was premature and we agree. Finding no merit to the Defendants' other arguments, we AFFIRM the monetary judgment and VACATE the order declaring nondischargeability of the judgment in bankruptcy.

I.

This appeal is an appendage of two lawsuits filed by the Securities and Exchange Commission ("SEC") to shut down two fraudulent prime bank trading programs. In March 1999, the SEC initiated a lawsuit ("*SEC v. Cook*") alleging that Cook and several other defendants were engaged in a complex Ponzi scheme (the "Dennel Program"). In the backdrop to this particular lawsuit, the district court issued a Receivership Order designed to protect any remaining assets to reimburse the investors defrauded by the Dennel Program. The court appointed Lawrence J. Warfield ("Warfield") as receiver. The court also issued a temporary restraining order that prohibited Cook or any person or entity cooperating with him from

> directly or indirectly, making any payment or expenditure of funds, incurring any additional liability (including, specifically, any advances on any line of credit), or effecting any sale, gift, hypothecation or other disposition of any asset, pending defendants providing sufficient proof to the Court that they have sufficient funds or assets to satisfy all claims arising from the violations of the federal

> securities laws alleged in the SEC's complaint.

The court subsequently entered a preliminary injunction with the same terms.

Martella is the sole shareholder and sole director of M&M. Martella is also a long-time friend and business associate of Cook. M&M had invested more than $600,000 with the Dennel Program directly, and about $237,000 with the Dennel Program through its pension plan. After his assets and those under his control were frozen, Cook was unable to pay his attorneys. Cook asked Martella to pay his attorneys in exchange for immediate reimbursement. On March 31, 1999 and April 8, 1999, Martella personally delivered two checks, in the amounts of $10,000 and $50,000, to Cook's attorneys. These checks were drawn on M&M's Chase Bank checking account. On April 9, 1999, IERC wired $60,000 from its U.S. Bank of Nevada account to M&M. At the time the $50,000 check was issued to Cook's attorneys, M&M's checking account would not have ***299** contained sufficient funds to pay it, but for the wire transfer from IERC.

In March 2002, the SEC filed a second lawsuit ("*SEC v. RDI*") against another set of defendants led by James and David Edwards. The defendants in this lawsuit included IERC, Resource Development Institute, LLC, ("RDI"), and other entities. The complaint alleged that the RDI prime bank trading program ("RDI Program") had its genesis in the Dennel Program, and that James and David Edwards, and their co-defendants, had developed the RDI Program to replace the Dennel Program after the SEC shut it down. The district court also entered a Receivership Order with respect to these defendants and again appointed Warfield as receiver.

After discovering the 1999 wire transfer from IERC to M&M, Warfield filed suit on December 20, 2002, claiming that the transfer of funds from IERC to M&M was fraudulent under the Uniform Fraudulent Transfer Act. Warfield also contended that Martella and M&M's failure to return the funds to him constituted wrongful conversion. Finally, Warfield alleged that Martella and M&M conspired with Cook and the Edwards Defendants to defraud the IERC, the Receivership Entities, and their investors. Warfield requested equitable disgorgement to prevent Martella and M&M from being unjustly enriched by their fraudulent acts—and joint and several liability as between the two defendants on the theory that Martella used M&M to perpetrate fraud and that the court should hold him personally accountable.

The case was tried before the district court beginning on January 10, 2005. On January 26, 2005, the district court entered its findings of facts and conclusions of law. The court found that Martella, knowing that Cook's accounts were frozen, agreed to make payments to Cook's counsel in exchange for immediate reimbursement. After Martella delivered two checks to Cook's lawyers, this transaction was completed when he was reimbursed by a wire transfer from IERC. Martella and M&M were aware or reasonably should have been aware of the court's order freezing Cook's assets and restricting the disposition of assets within his control.

In the same order, the court determined that: IERC was an entity created to perpetuate an illegal Ponzi scheme; all of its assets resulted from fraudulent activities; on April 9, 1999, when IERC transferred $60,000 to defendant M&M, IERC was insolvent; M&M gave no reasonably equivalent value to IERC for the $60,000 transfer; IERC made the transfer and M&M received the monies to hinder enforcement of the Court's orders freezing Cook's accounts and restricting the disposition of his assets, and to further perpetuate the fraud on Dennel's investors; and in using M&M for this money laundering transaction, Martella utilized his control over the corporation for an illegal purpose (violation of the court's orders) and to continue the fraudulent Dennel Program. [1]

On the basis of these findings, the district court concluded that: IERC's April 9, 1999 wire transfer of $60,000 to defendant M&M was a fraudulent transfer under § 24.005(a)(1) of the Texas Business and Commerce Code; the $60,000 payment constituted an unjust enrichment that the Defendants should be required to disgorge; and M&M was the alter ego of Martella, with respect to

the $60,000 payment. Finally, the court rejected the Defendants' ***300** asserted affirmative defenses of offset, "good faith," waiver, and laches.

The district court entered a final judgment granting Warfield joint and several recovery from M&M and Martella in the amount of $60,000 plus pre-judgment interest and costs. The court also declared that the judgment against the Defendants could not be discharged in bankruptcy. [2] The Defendants filed a Motion for New Trial on February 3, 2005, which the court denied on April 4, 2005. The Defendants timely appealed the Judgment and the denial of the Motion for New Trial. [3]

II.

On appeal, the Defendants argue that the district court erred in finding that the wire transfer of $60,000 constituted a fraudulent transfer under § 24.005(a)(1). The Defendants also contend that the district court erred in finding that the $60,000 payment constituted an unjust enrichment, and in holding that Martella could be held jointly and severally liable with M&M under the alter ego theory of liability. In the alternative, the Defendants argue that the court erred in denying their good faith defense. Finally, the Defendants argue that the District Court erred in holding that the final judgment may not be discharged in bankruptcy.

A.

[1] We first consider whether the district court erred in finding that the payment constituted a fraudulent transfer under the Texas Business and Commerce Code, § 24.005(a)(1). The Uniform Fraudulent Transfer Act as adopted by Texas provides that:

> A transfer ... incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or within a reasonable time after the transfer was made, ... if the debtor made a transfer or incurred the obligation: (1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor: (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or (B) intended to incur, or believed or reasonably believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

TEX. BUS. & COMM.CODE ANN. § 24.005(a). The district court explicitly held that the transfer was fraudulent under § 24.005(a)(1), as a transfer made "with actual intent to hinder, delay, or defraud any creditor of the debtor." [4] The district court's underlying findings of fact will be upheld unless they are clearly erroneous, while its legal conclusions are reviewed *de* ***301** *novo. Chandler v. City of Dallas,* 958 F.2d 85, 89 (5th Cir.1992).

[2] **[3]** The Defendants argue that the district court's determination that the $60,000 transfer was fraudulent under § 24.005(a)(1) was erroneous because Warfield provided no evidence to support a finding of actual intent on the part of the Defendants. Contrary to the Defendants' assertions, however, "the transferees' knowing participation is irrelevant under the statute" for purposes of establishing the premise of (as opposed to liability for) a fraudulent transfer. *Warfield v. Byron,* 436 F.3d 551, 559 (5th Cir.2006) (Jones, C.J.). [5] The statute requires only a finding of fraudulent intent on the part of the "debtor," which in this case is IERC. The district court made a finding, which the Defendants do not contest, that IERC was part of a Ponzi scheme at the time this transfer was made. In this circuit, proving that

IERC operated as a Ponzi scheme establishes the fraudulent intent behind the transfers it made. *Id.* at 558. Therefore, under our precedent, the district court did not err in holding that the transfer was fraudulent under § 24.005(a)(1).

[4] Additionally, the record demonstrates that the $60,000 transfer from IERC to the Defendants was fraudulent under § 24.005(a)(2). The district court found that IERC was insolvent on April 9, 1999 when it made the transfer and that M&M gave no reasonably equivalent value to IERC in return for the $60,000. Based on these two findings, the transfer qualifies as fraudulent under § 24.005(a)(2). The Defendants do not challenge the finding of insolvency, but they do contest the district court's conclusion that no value was given to IERC in exchange for the payment. [6]

[5] **[6]** The Defendants argue that IERC received value in exchange for its $60,000 transfer to M&M because the Defendants made a payment of the same amount to Cook's lawyers for legal fees. "The primary consideration in analyzing the exchange of value for any transfer is the degree to which the transferor's net worth is preserved." *Byron,* 436 F.3d at 560 (citing *Butler Aviation Int'l v. Whyte,* 6 F.3d 1119, 1127 (5th Cir.1993)). According to the commentary to the Uniform Fraudulent Transfer Act ("UFTA"), "value is to be determined in light of the act's purpose, in order to protect the creditors." *In re Agric. Res. & Tech. Group, Inc.,* 916 F.2d 528, 540 (9th Cir.1990). "Consideration having no utility from a creditor's viewpoint does not satisfy the statutory definition." UNIF. FRAUDULENT TRANSFER ACT § 3 cmt. 2. (1984). Here, IERC's net worth was diminished by the $60,000 payment to M&M and its defrauded creditors received no benefit from funding the legal defense of one of the major organizers of this fraudulent scheme. The district court was therefore correct in concluding that IERC did not receive reasonably equivalent value for its $60,000 transfer to M&M. *See In re Whaley,* 229 B.R. 767, 775 (Bankr.Minn.1999) ("A payment made *solely* ***302** for the benefit of a third party, such as a payment to satisfy a third party's debt, does not furnish reasonably-equivalent value to the debtor.") (citing *In re Bargfrede,* 117 F.3d 1078, 1080 (8th Cir.1997)).

[7] **[8]** The record therefore supports the finding that the $60,000 transfer from IERC to M&M was fraudulent under both §§ 24.005(a)(1) and 24.005(a)(2). Because the transfer was fraudulent under both sections, the district court correctly rejected the Defendants' good faith defense. As we explained in *Byron,* a defendant may prevent recovery of the transferred assets by proving that the transfers were received in good faith and in exchange for reasonably equivalent value. *Byron,* 436 F.3d at 558. The good faith defense fails here because the Defendants cannot show that they exchanged reasonably equivalent value for the $60,000 wire transfer. [7]

B.

[9] **[10]** We now turn to address whether the district court erred in holding Martella, the sole director and sole shareholder of M&M, jointly and severally liable for the fraudulent conduct of M&M. The Defendants argue that the district court's finding that M&M was the alter ego of Martella for the purposes of the $60,000 transfer was erroneous—and therefore that the court had no basis to hold Martella jointly and severally liable. Under Texas law, "[a]lter ego applies when there is such unity between corporation and individual that the separateness of the corporation has ceased and holding only the corporation liable would result in injustice." *Castleberry v. Branscum,* 721 S.W.2d 270, 272 (Tex.1986) (citing *First Nat. Bank in Canyon v. Gamble,* 134 Tex. 112, 132 S.W.2d 100 (1939)). Alter ego

> is shown from the total dealings of the corporation and the individual, including the degree to which corporate formalities have been followed and corporate and individual property have been kept separately, the amount of financial interest, ownership and control the

> individual maintains over the corporation, and whether the corporation has been used for personal purposes.

Id. The Defendants correctly point out that the district court made no findings with respect to these factors.

[11] **[12]** **[13]** Alter ego is not however, the only basis for piercing the corporate veil, although many cases "have blurred the distinction between alter ego and the other bases for disregarding the corporate fiction and treated alter ego as a synonym for the entire doctrine of disregarding the corporate fiction." *Id.* There are "three broad theories of corporate disregard" under Texas law. *Fidelity & Deposit Co. of Maryland v. Com. Casualty Consultants, Inc.,* 976 F.2d 272, 274 (5th Cir.1992). "The corporate veil is pierced when: (1) the corporation is the alter ego of its owners or shareholders; (2) the corporation is used for an illegal purpose, and (3) the corporation is used as a sham to perpetrate a fraud." *Id.* at 274–75 (citations omitted). Although the district court relied solely on its unsupported finding that M&M was the alter ego of Martella to justify the piercing of the corporate veil, "[w]e will not reverse a judgment if the district court can be affirmed on any ground, regardless of whether the district court articulated the ground." ***303** *Harris v. United States,* 35 Fed.Appx. 390 at *1 (5th Cir.2002) (unpublished) (citing *United Indus., Inc. v. Simon–Hartley, Ltd.,* 91 F.3d 762, 765 n. 6 (5th Cir.1996)).

The district court made explicit factual findings that "[w]ith regard to transferring $60,000 to Mr. Cook's attorneys on March 31, 1999 and April 8, 1999, and receiving $60,000 from IERC on April 9, 1999, defendant Martella utilized his control over defendant corporation M&M for an illegal purpose (violation of the Court's orders) and to perpetuate a fraud (the Dennel Trading Program)." We review the district court's factual findings for clear error, FED R. CIV. P. 52(a), and will not overturn them unless we are left with "the definite and firm conviction that a mistake has been committed." *Anderson v. City of Bessemer City, N.C.,* 470 U.S. 564, 573, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985) (internal quotation marks and citation omitted).

[14] We conclude that there is ample evidence to support the district court's finding that Martella used M&M for an illegal purpose, and on this basis we can uphold the court's conclusion that the corporate veil may be pierced in this case. Martella testified at trial that he was aware of the SEC lawsuit against Cook and of the order freezing Cook's assets, and that he was concerned about the impact of this lawsuit on M&M's investment in the Dennel Trading Program, which was determined to be a Ponzi scheme. He further testified that he was aware that Cook was trying to work with his attorneys to unfreeze the assets, but that Cook was unable to pay the retainer his attorneys required. Martella admitted to having a conversation with Cook in which Cook asked him to advance the funds to the attorneys in exchange for immediate reimbursement. He confirmed that he personally delivered two checks to Cook's lawyers, totaling $60,000, and that he gave Cook an account number to effectuate the wire transfer. Martella also confirmed that there were insufficient funds in M&M's bank account to cover the $60,000 at the time that the wire transfer payment was received. Based on these facts, the district court's finding that Martella used M&M to help Cook circumvent the Receivership Order and to perpetuate the Ponzi scheme after the Dennel Trading Program was shut down was not clearly erroneous. We therefore conclude that the district court did not err in finding that M&M was used for an illegal purpose and we uphold the piercing of the corporate veil solely on that basis.

C.

[15] Finally, the Defendants challenge the district court's determination that the judgment may not be discharged in bankruptcy. The Defendants argue that this issue is not yet ripe for adjudication as they have not filed for bankruptcy, nor sought to have the judgment set aside in bankruptcy. Warfield concurs that this determination was premature, and we agree.

III.

For the foregoing reasons, we AFFIRM the judgment as to Martella and M&M, VACATE the judgment as to nondischargeability and REMAND for such further proceedings as the district court may deem necessary. [8]

***304** AFFIRMED in part, VACATED in part, and REMANDED.

All Citations

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Footnotes

1 Although fraud is more commonly "perpetrated" than "perpetuated," in this case, the district court specifically found that the IERC was created to perpetuate the fraudulent Ponzi scheme after the SEC shut down its predecessor, the Dennel Trading Program.

2 The final judgment was entered on January 24, 2005, two days prior to the findings of fact and conclusions of law.

3 On November 8, 2005, while this appeal was pending, the Defendants filed a Motion for Relief From Judgment under Federal Rule of Civil Procedure 60, claiming that the $60,000 RDI Receivership claim should be set off against $167,543.00 that M&M reinvested with the Rivera Breach Trust 410, which they alleged was another RDI receivership entity. The district court denied this motion and Defendants have appealed. This appeal is not before us.

4 It appears that the district court also intended to hold that the transfer was fraudulent under § 24.005(a)(2), but due to an apparent scrivener's error failed to do so. The first two conclusions of law in the district court's opinion are identical. This court can, in any event, uphold the judgment on any basis supported by the record. *Zuspann v. Brown,* 60 F.3d 1156, 1160 (5th Cir.1995).

5 In *Byron,* the court was reviewing Washington State law. 436 F.3d at 557. However, the relevant language of the provision analyzed is identical to that in this case. It provides:

> (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation: (1) With actual intent to hinder, delay, or defraud any creditor of the debtor.

WASH. REV.CODE § 19.40.041(a)(1).

6 This court reviews *de novo* "the issue whether a debtor received reasonably equivalent value." *Matter of Fairchild Aircraft Corp.,* 6 F.3d 1119, 1125 (5th Cir.1993).

7 Defendants also argue that the district court erred in holding that IERC's wire transfer to M&M constituted unjust enrichment. Because we find that the wire transfer was fraudulent under § 24.005, we need not reach the question of whether M&M was unjustly enriched.

8 The Defendants also appeal a Garnishment Judgment entered by the district court on November 4, 2005. Because the Defendants' only challenge to the garnishment is that the underlying judgment is invalid, our affirmance of the district court on the Defendants' liability for the fraudulent conveyance leads us to hereby AFFIRM the garnishment judgment as well.