NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. EC-10-1191-DHKi
BELLA VISTA BY PARAMONT, LLC,	Bk. No. 07-90770-RHS
Debtor.	Adv. Pro. No. 08-9107
WARDA & YONANO, LLP,	
Appellant,	
v.	**M E M O R A N D U M**[1]
GARY FARRAR, Chapter 7 Trustee,	
Appellee.	

Argued and Submitted on February 17, 2011
at Sacramento, California

Filed - March 11, 2011

Appeal from the United States Bankruptcy Court
for the Eastern District of California

Honorable Ronald H. Sargis, Bankruptcy Judge, Presiding

Appearances: Michael S. Warda, Esq. of Warda & Yonano, LLP for the Appellant.
Clifford W. Stevens, Esq. of Neumiller & Beardslee for the Appellee.

Before: DUNN, HOLLOWELL and KIRSCHER, Bankruptcy Judges.

[1] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

Warda & Yonano ("W&Y") represented the debtor, Bella Vista by Paramont, LLC, in its chapter 7 bankruptcy case and certain state court litigation.[2] W&Y also represented JCW-Cypress Home Group ("JCW-Cypress") and JC Williams Co. (collectively, "Williams entities"), two entities affiliated with the debtor, and John Williams, president of JC Williams Co. Within one year before the debtor's bankruptcy filing, W&Y received payments for various legal services rendered to the debtor and the Williams entities. The payments to W&Y came out of funds from a $100,000 check made out to the debtor. The chapter 7 trustee, Gary Farrar, filed a complaint against W&Y, Williams and the Williams entities to avoid the payments as preferential and fraudulent transfers under §§ 547(b) and 548(a)(1)(B), respectively, and to recover them under § 550(a)(1). After a one-day trial, the bankruptcy court entered judgment against W&Y, but entered judgment in favor of Williams and the Williams entities.[3]

Only W&Y appeals the bankruptcy court's judgment, contending that the bankruptcy court erred in allowing the trustee to avoid the payments to W&Y as preferential transfers under § 547(b) because W&Y did not qualify as a non-statutory insider. It also argues that the bankruptcy court erred in allowing the trustee to avoid the payments to W&Y as fraudulent transfers under § 548(a)(1)(B) because the bankruptcy court could not determine

---

[2] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

[3] The bankruptcy court's judgment regarding Williams and the Williams entities was not appealed.

what portion of the funds were paid to W&Y for legal services rendered to the Williams entities. W&Y further contends that the bankruptcy court erred in allowing the trustee to recover the payments under § 550(a)(1) as W&Y was not an initial transferee.

Based on our review of the entire record, we conclude that the facts do not support the bankruptcy court's findings for the purposes of avoiding the payments as preferential transfers under § 547(b) and as fraudulent transfers under § 548(a)(1)(B). Further, we determine that the bankruptcy court should not have allowed the trustee to recover the payments to W&Y under § 550. We REVERSE.

FACTS

JCW-Cypress was the sole member of the debtor. JC Williams Co. was the general partner of JCW-Cypress. Williams acted as representative for the debtor and the Williams entities.[4]

Michael Warda of W&Y represented the debtor, Williams and the Williams entities in various matters before and during the debtor's bankruptcy case.

In 2003, the debtor, Williams and the Williams entities entered into a settlement agreement with Denny Brooks, Inc. ("DBI"), a former member of the debtor, and Denny Brooks, the shareholder of DBI. Under the settlement agreement, DBI and

---

[4] Neither the debtor nor W&Y included in the record a complete copy of the transcript of the April 26, 2010 trial. We obtained a copy of the transcript from the bankruptcy court's adversary proceeding docket. See Atwood v. Chase Manhattan Mortg. Co. (In re Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

Brooks agreed to indemnify the debtor up to $100,000 for any judgment entered against it in a state court action in which the debtor and JCW-Cypress were defendants.

Sometime in late 2006, DBI issued a check in the amount of $100,000, payable to the debtor ("Bella Vista check"). The funds were deposited in W&Y's client trust account ("trust account funds") created for the debtor, Williams and the Williams entities.

The debtor owed W&Y a total of approximately $23,000. Williams authorized W&Y to use the trust account funds to pay any outstanding bills owed by the debtor and the Williams entities. Over the course of three or four months, W&Y allocated the trust account funds among the various bills owed by the debtor and the Williams entities, paying itself accordingly. By March 21, 2007, the trust account funds were fully depleted.

On July 30, 2007, the debtor filed its chapter 7 petition, with Warda as its attorney. The debtor did not schedule W&Y as a general unsecured creditor; it scheduled only two general unsecured creditors, Ross Carroll, Inc. and JCW-Cypress, both with claims in unknown amounts.

The debtor did not list on its statement of financial affairs ("SOFA") any payments made to W&Y within one year before the bankruptcy filing. The debtor did not list on its SOFA other transfers made other than in the ordinary course of business in the two years before the bankruptcy filing. The debtor also did not list on its SOFA any payments made to W&Y for legal services

///

///

rendered in connection with its bankruptcy case.[5]

The trustee filed a complaint against W&Y, Williams and the Williams entities, seeking to avoid as preferential transfers under § 547(b) and as fraudulent transfers under § 548(a)(1)(B) the payments made to W&Y with the trust account funds.[6] The trustee further sought to recover the payments made to W&Y, Williams and the Williams entities under § 550.

The bankruptcy court held a trial on the trustee's complaint on April 26, 2010. At trial, Warda gave testimony concerning the nature of W&Y's relationship with the debtor. He testified that W&Y had never been in a relationship that would have qualified it as an insider of the debtor, Williams and the Williams entities. Warda stated that neither W&Y nor its partners were officers, directors or general partners of the debtor and/or either of the Williams entities. He further testified that neither W&Y nor its partners had financial or managerial control over the debtor and the Williams entities.

Warda also testified that neither he nor Nicholas Yonano, the other name partner of W&Y, was related to Williams or any person affiliated with the debtor or the Williams entities. He

---

[5] Specifically, in its SOFA, the debtor referred to the "attached schedule," which the bankruptcy court deduced to mean the disclosure of compensation of attorney for debtor ("attorney fee disclosure"). The attorney fee disclosure indicated that W&Y had received $0 prior to the bankruptcy filing and that the balance due to W&Y was unknown. See main case docket no. 9.

[6] The trustee also sought to avoid the payments made to W&Y as fraudulent transfers under § 544(b). W&Y does not appear to challenge on appeal the bankruptcy court's determinations under § 544(b), if any.

further stated that neither he nor Yonano was granted power of attorney to conduct the affairs of the debtor and the Williams entities.

He testified that neither he nor Yonano ever conducted business or dealt with the debtor and the Williams entities other than at arm's length. Warda asserted that W&Y and its partners only provided legal services.

Warda testified that the debtor filed for bankruptcy to stop Ross Carroll, Inc.'s attempts to recover from the debtor funds relating to a state court judgment and as "a good way to just dissolve the entity."[7] Warda testified that he did not review the debtor's bankruptcy schedules with Williams, though he provided them to Williams.

Warda explained that he worked with Williams's assistant, Melissa Jimenez, in preparing the debtor's bankruptcy schedules. Specifically, Warda confirmed with Jimenez that there were no unpaid creditors; she informed Warda that the debtor had not incurred any debt since 2003.

Jimenez did not provide any input, however, as to whether Warda should include Ross Carroll, Inc. and JCW-Cypress as general unsecured creditors in the debtor's bankruptcy schedules. She only indicated that JCW-Cypress may have a claim against the debtor for funds JCW-Cypress advanced to the debtor. Warda

---

[7] Though Warda testified that he believed the bankruptcy filing was a "good way" to dissolve the debtor, he later testified that Ross Carroll, Inc.'s collection efforts were "the sole reason for the bankruptcy [filing]." Hr'g Tr. (April 26, 2010), at 106:8-12.

explained that he decided to schedule JCW-Cypress as a general unsecured creditor based on his discussion with Jimenez. He decided to schedule Ross Carroll, Inc. as a general unsecured creditor because Ross Carroll, Inc. claimed that it had not been paid.

Warda testified that, after payment to W&Y for bills owed by the debtor, the remaining trust account funds were paid to W&Y for bills owed by the Williams entities. He stated that he could not distinguish the amounts owed by the debtor and the Williams entities for legal services rendered on their behalf by W&Y.

The bankruptcy court orally issued its ruling at the end of trial. It went through the elements of a preferential transfer under § 547(b). Among its findings, the bankruptcy court determined that W&Y "was imminently involved in the operations of [the debtor]," as evidenced in W&Y's preparation of the debtor's bankruptcy petition and schedules. Hr'g Tr. (April 26, 2010), at 176:11-14. The bankruptcy court found that W&Y "knew all of the [debtor's] debts [and] the [state court] litigation [and] appeared to take part with respect to when the bankruptcy was going to be filed." Hr'g Tr. (April 26, 2010), at 176:14-16. The bankruptcy court thus concluded that W&Y was an insider for the purpose of applying the reachback period under § 547(b).

The bankruptcy court also made fraudulent transfer determinations under § 548(a)(1)(B), focusing on the first element: whether the debtor received less than a reasonably equivalent value in exchange for such transfers. The bankruptcy court ultimately determined that the debtor did not receive reasonably equivalent value in exchange for the payments made to

W&Y on bills owed to it by the Williams entities.

The bankruptcy court began by stating that if a creditor of the debtor receives payment, payment of the debt constitutes reasonably equivalent value. It went on to say that if a party was not a creditor of the debtor but nonetheless received payment from the debtor, such payment constituted a fraudulent transfer.

The bankruptcy court found that the debtor had an unpaid debt to JCW-Cypress, which appeared to be undisputed, though the debt was in an unknown amount. It then determined that the trust account funds belonged to the debtor because the check – the source of the trust account funds – had been made payable to the debtor. The bankruptcy court determined that, even though the trust account funds belonged to the debtor, some of the trust account funds had been used to pay bills owed by the Williams entities to W&Y. The bankruptcy court could not determine from the record before it, however, what portion of the trust account funds had been used to pay bills owed by the Williams entities to W&Y. The bankruptcy court concluded that, because some of the trust account funds had been used to pay W&Y for legal services rendered to the Williams entities, the payments to W&Y constituted fraudulent transfers under § 548(a)(1)(B).

The bankruptcy court further found that the trustee could recover from W&Y the entire amount of the trust account funds under § 550, as the payments to W&Y with the trust account funds constituted preferential and fraudulent transfers. The bankruptcy court stated that "[b]ecause it's the same $100,000, it [was] not fatally defective to the trustee's claim that today [the bankruptcy court could] not identify the specific dollar

amount that represent[ed] the fraudulent conveyance part and the dollar amount that represent[ed] the preference." Hr'g Tr. (April 26, 2010), at 178:24-25, 179:1-3. The bankruptcy court thus concluded that "with respect to [W&Y], [under] Section 550, the trustee is entitled to judgment for the $100,000 between it being a fraudulent conveyance and being a preference." Hr'g Tr. (April 26, 2010), at 178:20-23. Notably, the bankruptcy court did not make fraudulent transfer findings against the Williams entities because it could not determine from the evidence presented how much of the Williams entities' bills had been paid from the $100,000 Bella Vista check.

The bankruptcy court entered judgment in favor of the trustee against W&Y on May 17, 2010. W&Y timely appealed the bankruptcy court's judgment.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(F). We have jurisdiction under 28 U.S.C. § 158.

ISSUES

(1) Did the bankruptcy court err in determining that W&Y was an "insider" for the purpose of applying the one-year preference period under § 547(b)(4)(B)?

(2) Did the bankruptcy court err in determining that W&Y received a fraudulent transfer under § 548(a)(1)(B)?

(3) Did the bankruptcy court err in determining that W&Y was an "initial transferee" for the purpose of allowing the trustee

to recover the trust account funds under § 550(a)(1)?

STANDARDS OF REVIEW

"The determination of insider status is a question of fact." Friedman v. Sheila Plotsky Brokers, Inc. (In re Friedman), 126 B.R. 63, 67 (9th Cir. BAP 1991). We review the bankruptcy court's factual findings for clear error. Id. Factual findings are clearly erroneous when, although there is evidence supporting them, upon review of the entire evidence, we have the definite and firm conviction that a mistake has been committed. Banks v. Gill Distrib. Ctrs., Inc. (In re Banks), 263 F.3d 862, 869 (9th Cir. 2001)(quotation omitted).

We review de novo mixed questions of law and fact. Murray v. Bammer (In re Bammer), 131 F.3d 788, 792 (9th Cir. 1997). A mixed question of law and fact arises "when the historical facts are established; the rule of law is undisputed . . . and the issue is whether the facts satisfy the legal rule." Id.

We also review de novo the bankruptcy court's conclusions of law and statutory interpretations. Abele v. Modern Fin. Plans Servs., Inc. (In re Cohen), 300 F.3d 1097, 1101 (9th Cir. 2002).

DISCUSSION[8]

[8] Among the nine issue statements made by W&Y in its opening brief, W&Y argues that the bankruptcy court should not have allowed the trustee to offer any exhibits into evidence at trial because he did not comply with LBR 9017-1 and the bankruptcy court's order rescheduling the trial (adv. proc. docket no. 23). W&Y does not brief this issue, however. We thus decline to address this issue here. See Meehan v. County of Los Angeles, (continued...)

A. Insider status under § 547(b)

Section 547(b) authorizes a trustee to avoid preferential transfers made by a debtor within certain periods of time before the bankruptcy filing.[9] Miller v. Schuman (In re Schuman), 81 B.R. 583, 585 (9th Cir. BAP 1987). Where a creditor is an insider, the preference period is one year. Id. The trustee bears the burden of proof to establish each and every element

---

[8](...continued)
856 F.2d 102, 106 n.1 (9th Cir. 1988)(issue deemed abandoned because plaintiffs did not brief it); Phillips v. Calhoun, 956 F.2d 949, 954 (10th Cir. 1992)("[E]ven issues designated for review are lost if they are not actually argued in the party's brief."); Adams v. Unione Mediterranea Di Scurta, 364 F.3d 646, 653 (5th Cir. 2004)("Issues not raised or inadequately briefed on appeal are waived.").

[9] Section 547 in relevant part provides:

> (b) Except as provided in subsection (c) and (i) of this section, the trustee may avoid any transfer of an interest of the debtor in property —
>
> (1) to or for the benefit of a creditor;
>
> (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
>
> (3) made while the debtor was insolvent;
>
> (4) made –
>
> . . .
>
> (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
>
> (5) that enables such creditor to receive more than such creditor would receive if –
>
> (A) the case were a case under chapter 7 of this title;
>
> (B) the transfer had not been made; and
>
> (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

under § 547(b) in order to avoid a transfer as a preference. Batlan v. TransAmerica Commercial Fin. Corp. (In re Smith's Home Furnishings, Inc.), 265 F.3d 959, 963 (9th Cir. 2001). As we mentioned above, however, W&Y only challenges the bankruptcy court's determination of its insider status under § 547(b).

Section 101(31) lists various entities that qualify as insiders (i.e., "per se insiders") when the debtor is a corporation. Friedman, 126 B.R. at 69. The list is not exhaustive, however; the classification of insiders is not limited to the statutory listing. See Schuman, 81 B.R. at 586. Insiders that do not fall within this classification are known as "non-statutory insiders."

"[Non-statutory] insider status may be based on a professional or business relationship with the debtor, in addition to the Code's per se classifications, where such relationship compels the conclusion that the individual or entity has a relationship with the debtor, close enough to gain an advantage attributable simply to affinity rather than to the course of business dealings between the parties." Friedman, 126 B.R. at 70. A non-statutory insider is one "who has a sufficiently close relationship with the debtor that his conduct is made subject to closer scrutiny than those dealing at arms [sic] length with the debtor." Id. (quotation and citation omitted).

In determining whether a creditor qualifies as a non-statutory insider, courts look at "the closeness of the parties and the degree to which the transferee is able to exert control or influence over the debtor." Schuman, 81 B.R. at 586. A

transferee is a non-statutory insider if he or she "exercises such control or influence over the debtor as to render their transaction not arms-length [sic]."[10] Id. (quotation and citation omitted). Courts have assessed the creditor's presence or absence of control over the debtor and the creditor's access to inside information in making their determinations of non-statutory insider status. Anstine, 531 F.3d at 1277. The inquiry thus boils down to whether there is a close relationship between the debtor and the creditor and whether there is anything other than closeness to suggest that any transactions were not conducted at arm's length. Id. Non-statutory insiders "are to be found by courts 'in particular cases, based on the specific facts.'" Id. (quoting Rupp v. United Security Bank (In re Kunz), 489 F.3d 1072, 1079 (10th Cir. 2007)).

Here, the bankruptcy court found that W&Y qualified as an insider because it was "imminently involved in the operations of the debtor."[11] The bankruptcy court deduced this from W&Y's knowledge of the debtor's debts and state court litigation and W&Y's timing of the debtor's bankruptcy filing.

---

[10] "An arm's-length transaction is a transaction in good faith in the ordinary course of business by parties with independent interests . . . . The standard under which unrelated parties, each acting in his or her own best interest, would carry out a particular transaction." Anstine v. Carl Zeiss Meditec AG (In re U.S. Medical, Inc.), 531 F.3d 1272, 1277 n.4 (10th Cir. 2008)(quoting Black's Law Dictionary 109 (6th ed. 1990)) (quotation marks omitted).

[11] Warda testified that W&Y did not fall within any of the classifications under § 101(31). We thus conclude that the bankruptcy court focused its inquiry on whether W&Y qualified as a non-statutory insider, even though the bankruptcy court did not expressly state this.

However, upon reviewing the record, we do not consider W&Y's actions as rising to such a degree of control or influence as to render them not conducted at arm's length. Knowledge of the debtor's debts and involvement in the state court litigation is in the ordinary course of business for a debtor's attorney – it is part and parcel of his or her job to understand the debtor's financial condition in order to represent the debtor in bankruptcy. Timing the debtor's bankruptcy filing also is not necessarily indicative of control or influence over the debtor; oftentimes, an attorney files bankruptcy on behalf of a debtor based on circumstances (e.g., halting a foreclosure sale).

Warda's testimony demonstrates that W&Y neither had such a close relationship with the debtor nor exerted such control or influence over it as to render their transactions less than at arm's length. Warda testified that he scheduled JCW-Cypress as a general unsecured creditor based on his discussion with Jimenez. The fact that he had to consult Jimenez in order to prepare the schedules shows that he was not so close to the debtor as to be privy to all of the debtor's financial affairs. As for including Ross Carroll, Inc. in the debtor's schedules, Warda knew of its claims because he had been involved in much of the state court litigation between the debtor and Ross Carroll, Inc.

Moreover, W&Y cannot be an insider if it acted solely pursuant to instructions given by its client, Williams, who represented both the debtor and the Williams entities. Williams specifically authorized W&Y to use the trust account funds to pay bills owed by the debtor and the Williams entities.

Based on our review of the record, we have a definite and

firm impression that the facts do not support the bankruptcy court's determination that W&Y qualified as an insider for the purpose of applying the one-year preference period under § 547(b). The bankruptcy court clearly erred in that determination.

B. Fraudulent transfers under § 548(a)(1)(B)[12]

As we mentioned above, the bankruptcy court found that the debtor did not receive reasonably equivalent value in exchange for the payments made to W&Y on bills owed to it by the Williams entities. W&Y does not appear to challenge the bankruptcy court's determination on this point. W&Y argues, however, that the bankruptcy court erred in entering a fraudulent transfer judgment against W&Y when it could not determine what portion of the trust account funds were paid to W&Y for legal services rendered to the Williams entities. The bankruptcy court believed it did not need to make such a determination because, whether the transfers were preferential or fraudulent, it was "the same $100,000" (i.e., trust account funds).

---

[12] Section 548 in relevant part provides:

> (a)(1) The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily –
>
> (B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation
>
> . . . .

"[T]he primary focus of Section 548 is on the net effect of the transaction on the debtor's estate and the funds available to the unsecured creditors." Frontier Bank v. Brown (In re N. Merch., Inc.), 371 F.3d 1056, 1059 (9th Cir. 2004). A party "receives reasonably equivalent value if it gets roughly the value it gave." Jordan v. Kroneberger (In re Jordan), 392 B.R. 428, 441-42 (Bankr. D. Idaho 2008).

Because W&Y does not raise it as an issue on appeal, we do not question the bankruptcy court's determination as to "reasonably equivalent value." We do conclude, however, that the bankruptcy court erred in its fraudulent transfer determination against W&Y when it could not determine from the evidence presented the amount of the trust account funds paid to W&Y on bills owed by the Williams entities. Our conclusion in that regard is bolstered as we analyze the bankruptcy court's decision to allow the trustee to recover the payments to W&Y under § 550, as we discuss below.

C. Initial transferee under § 550

When a trustee successfully avoids a transfer of property, he or she may recover the property transferred from the initial transferee. See § 550(a)(1).[13] Although the Bankruptcy Code

---

[13] Section 550 provides:

> (a) Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548 . . . of this title, the trustee may recover, for the benefit of the estate, the property transferred, or if, the court so orders, the value of

(continued...)

does not define "initial transferee," generally, "a transferee is one who, at a minimum, has dominion over the money or other asset, the right to put the money to one's own purpose." Abele v. Modern Fin. Plans Servs., Inc. (In re Cohen), 300 F.3d 1097, 1102 (9th Cir. 2002). Within the Ninth Circuit, courts apply the "dominion test," which focuses on "whether an entity had legal authority over the money and the right to use the money however it wished." Universal Serv. Admin. Co. v. Post-Confirmation Comm. of Unsecured Creditors of Incomnet Commc'n Corp. (In re Incoment, Inc.), 463 F.3d 1064, 1070 (9th Cir. 2006).

The trustee did not demonstrate that W&Y qualified as an initial transferee under § 550. The bankruptcy court moreover provided no analysis under § 550. It did not make any specific findings as to whether W&Y was an initial transferee under § 550. The bankruptcy court simply concluded that the trustee could recover the payments to W&Y because they constituted preferential and fraudulent transfers. It granted the trustee judgment in the entire amount of the trust account funds (i.e., $100,000) without distinguishing what portion of the trust account funds paid to W&Y for the Williams entities' bills constituted a fraudulent transfer under § 548(a)(1)(B). The bankruptcy court's determination of the fraudulent transfer claim under § 548(a)(1)(B) against W&Y is fundamentally inconsistent with its determination that it could not find in favor of the trustee on

---

[13](...continued)
such property, from –
(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made . . . .

his fraudulent transfer claims against the Williams entities because the trustee did not meet his burden of proof to establish the amount of the fraudulent transfer(s). We therefore conclude that the bankruptcy court erred in entering judgment in favor of the trustee against W&Y on his fraudulent transfer claim.

CONCLUSION

Reviewing the entire evidentiary record, we have the definite and firm conviction that the facts do not support the bankruptcy court's finding that W&Y qualified as an insider for the purpose of applying § 547(b). We also determine that the facts do not support the bankruptcy court's finding that W&Y is liable for all of the trust account funds paid to it for the debtor's and the William entities' bills under § 548(a)(1)(B). Because the bankruptcy court clearly erred in allowing the trustee to avoid the payments to W&Y as preferential under § 547(b), it should not have allowed the trustee to recover the payments under § 550(a)(1). The bankruptcy court also clearly erred in allowing the trustee to avoid all the payments made to W&Y under § 548(a)(1)(B) as fraudulent transfers without first determining what portion of the payments to W&Y out of the trust account funds constituted fraudulent transfers. We accordingly REVERSE the bankruptcy court's judgment in favor of the trustee.