

Attachment A

FILED**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

MAY 21 2018

CLERK U.S. DISTRICT COURT

UNITED STATES OF AMERICA, §

By: _____

Deputy

v. §

CRIMINAL NO. 4:15-CR-225-BJ

LONNIE BRANTLEY, §

**ORDER PARTIALLY GRANTING UNITED STATES OF AMERICA'S MOTION
FOR FINDING OF DEFAULT AND/OR RESENTENCING, AVOIDANCE OF
FRAUDULENT TRANSFERS, THE SALE OF REAL PROPERTY, AND
INCREASED PAYMENT SCHEDULE AND DENYING DEFENDANT'S
MOTION FOR EXTENSION OF TIME**

Pending before the Court are two motions: (1) a Motion for Finding of Default and/or Resentencing, Avoidance of Fraudulent Transfers, the Sale of Real Property, and Increased Payment Schedule [doc. 66], filed by the United States of America ("United States" or "the government") on October 6, 2017; and (2) a Motion for Extension of Time [doc. 78], filed by Defendant Lonnie Brantley ("Brantley" or "Defendant") on February 28, 2018. For the reasons set forth below, the Court concludes that the United States' motion should be **PARTIALLY GRANTED** and Defendant's motion should be **DENIED**.

Approximately two and a half years ago, on November 4, 2015, this Court entered judgment against Brantley, sentenced him to a 60-month term of probation, and ordered him to pay \$3,358,372.94 in restitution to the victim of his crime.¹ In its motion filed on October 6, 2017,

¹ The Judgment stated:

If, upon commencement of probation, any part of the \$3,358,272.94 restitution ordered by this judgment remains unpaid, the defendant shall make payments on such unpaid amount at the rate of at least \$1,500 per month, the first such payment to be made no later than 60 days from the date the sentence is imposed and another payment to be made on the same day of each month thereafter until the restitution amount is paid in full. Any unpaid balance of the restitution ordered by this judgment shall be paid in full 60 days prior to the termination of the term of probation.

the government seeks entry of an order of default under 18 U.S.C. § 3613A and/or resentencing under 18 U.S.C. § 3614, avoidance of fraudulent transfers of property under the Federal Debt Collection Procedures Act ("FDCPA"), 28 U.S.C. § 3304(b)(1) and/or Tex. Bus. & Com. Code Ann. § 24.005(a), the sale of real property under 18 U.S.C. § 3613A and 28 U.S.C. § 3306, and increased installment payments under 18 U.S.C. § 3664(k) and/or 28 U.S.C. § 3204. On January 12, 2018, Brantley filed his response to the government's motion, and on January 23, 2018, the government filed its reply. On February 13, 2018, the Court held a hearing on the government's motion and gave the parties additional time in which to reach a settlement regarding the sale of Brantley's real property in Southlake, Texas. Thereafter, on February 28, 2018, Defendant filed his above-referenced Motion for Extension of Time. After the government filed a response and Defendant filed a reply, the Court ordered both parties to file additional briefing on one issue raised by Defendant in his reply. The Court, on April 23, 2018, held a second hearing on the motions, and Defendant filed a supplemental document on April 27, 2018. After considering all motions, all relevant filings and pleadings, the hearing, and all relevant information in the record, the Court issues the following order:

I. The Court voids the postnuptial agreement as fraudulent for purposes of restitution in this case.

Under both federal and Texas law, to prevail on a fraudulent transfer theory, the government must show *either* (1) that the transfer was made with actual intent to hinder, delay, or defraud a creditor;² *or* (2) that the transfer was made by an insolvent debtor without receiving

² For actual fraud, specific intent is inferred from consideration of all relevant factors. *See, e.g.*, 28 U.S.C. § 3304(b)(1)(A), the analogous fraudulent transfer provisions in the United States Bankruptcy Code, 11 U.S.C. § 548(a)(1), and the Texas Uniform Fraudulent Transfer Act ("TUFTA"), Tex. Bus. & Com. Code Ann. § 24.005(a); *Phillips & Hornsby Litig. v. Glass*, 204 F. App'x 398, 401 (5th Cir. 2006) (citing *BMG Music v. Martinez*, 74 F.3d 87, 90-91 (5th Cir. 1996)).

adequate consideration.³ The government has submitted ample evidence to meet its burden that defendant has committed a fraudulent transfer.

The undisputed facts are that Brantley transferred his interest in community property to his spouse, Anna Brantley ("Anna"), by executing a postnuptial agreement dated February 15, 2015 after he had defrauded his victim of more than \$3 million and approximately nine months before he pled guilty to an offense for which mandatory restitution would be imposed. See Plea Agreement dated September 29, 2015 (Dkt. No. 11). This agreement transferred substantially all of Brantley's assets to Anna, leaving little to nothing in his name to pay his debts. However, Brantley did not receive reasonably equivalent value in exchange for the transfers. Intangible benefits such as preservation of marriage or executory promises to provide support do not qualify as value. See *In re Hinsley*, 201 F.3d 638, 643-44 (5th Cir. 2000); *In re Schaefer*, 331 B.R. 401, 419-20 (Bankr. N.D. Iowa 2005).

After the transfers, Brantley became insolvent, as the sum of his debts exceeded all of his assets. By design or through reasonable inference, the postnuptial agreement made Brantley essentially judgment proof. Therefore, this Court declares the Postnuptial Agreement fraudulent for purposes of restitution in this case and, thus, void under sections 3304 and 3306 of the FDCPA.⁴

³ For constructive fraud, intent to defraud is irrelevant when a debtor conveys assets for inadequate consideration, rendering himself insolvent, at a time when he has existing or contemplated indebtedness. See 28 U.S.C. § 3304(b)(1)(B)(ii); *United States v. Loftis*, 607 F.3d 173, 176-77 (5th Cir. 2010); *United States v. Resnick*, 594 F.3d 562, 567 (7th Cir. 2010); and Tex. Bus. & Com. Code Ann. § 24.005(a)(2).

⁴ As the Court finds ample evidence in the record to determine that Lonnie and Anna Brantley executed their postnuptial agreement in actual fraud, it will not provide substantive analysis to the government's constructive fraud agreement. However, based on the evidence in the record, the Court also finds that the postnuptial agreement should be set aside under the constructive fraud provisions of 28 U.S.C. § 3304(b)(1)(B).

II. The Court orders the sale of real property located at 442 Marshall Road, Southlake, Texas.

Multiple statutes provide this Court authority to order the sale of real property in which Brantley has a substantial nonexempt interest. *See, e.g.*, 18 U.S.C. § 3613A, 28 U.S.C. § 3306, 18 U.S.C. §§ 3613 and 3664(m)(1)(A), 26 U.S.C. §§ 7402(a) and 7403(d) and 28 U.S.C. § 3203(e). According to the evidence in the record, the appraisal value of Brantley's property ranges from approximately \$850,000 to \$939,825, and Brantley has been unwilling and/or unable to get a home equity loan or sell his house to recover the equity as payment toward his restitution. Meanwhile, the Court finds that Brantley's approximate \$5,000 monthly mortgage payment is an unreasonable expense that limits the amount he pays toward his restitution.⁵ Therefore, the Court orders the government to sell the property and apply the net equity towards his restitution debt pursuant to the terms set forth hereinbelow.

Pursuant to 18 U.S.C. §§ 3613 and 3664(m)(1)(A), 26 U.S.C. §§ 7402(a) and 7403(d) and 28 U.S.C. § 3203(e), the Court appoints Carriejean Prince with Ebby Halliday Realtors as Receiver to take possession and arrange for the sale of the real property located at 442 Marshall Road, Southlake, Texas 76092, which shall be marketed in a commercially reasonable manner to maximize recovery. Within 10 days from the entry of this Order, the Receiver is directed to enter and inspect 442 Marshall Road, Southlake, Texas, including all buildings, improvements, fixtures, appurtenances, materials, and equipment thereon, as needed to preserve and protect the value of the property, to put it into saleable condition, and to arrange for the sale of the property, free and clear of any rights, titles, claims, or interests of Brantley. The Receiver may request the assistance

⁵ The Court notes that Defendant represented at the last hearing before the Court that his monthly mortgage payment would be reduced to approximately \$3,856 starting in November due to some changes that occurred in his escrow account with the bank. Even assuming that representation to be true, the Court still finds the government is entitled to the net equity in Defendant's home to be applied to Brantley's restitution debt.

of the United States Marshals Service ("USMS") to enter the premises located at 442 Marshall Road, Southlake, Texas 76092, including garages, sheds, or other detached structures, to effectuate any part of the receivership and sale order.

The Receiver shall have the authority to arrange for the sale of 442 Marshall Road, Southlake, Texas, subject to confirmation by this Court, in any manner approved by the United States. The terms of any purchase agreement shall include the balance of the purchase price paid in cash at closing, and may include an earnest money deposit, in an amount to be approved by the United States, forfeitable to the United States upon the purchaser's failure to perform.

The closing shall not occur prior to June 15, 2018 and not until after the sale has been approved and confirmed by further order of this Court. At closing, the purchaser or purchasers shall receive a quitclaim deed to the property executed by the Receiver.

The Receiver shall have all of the rights and powers necessary to fulfill its obligations under this Order, specifically including, but not necessarily limited to, the power to enter 442 Marshall Road, Southlake, Texas, to manage the real property, to advertise the sale of the real property, to show the property to prospective buyers, and to take any action reasonably necessary to protect and preserve the value of the real property prior to sale, and to put it into saleable condition, including making expenditures of funds that are first approved by the United States for reasonable and necessary maintenance and improvements. Such costs are to be recovered by the Receiver through the sales proceeds.

The Receiver shall be compensated from the proceeds of the sale of 442 Marshall Road, Southlake, Texas as a real estate broker (a) in an amount equal to 6% of the gross sale proceeds⁶

⁶ The 6% commission shall be distributed in the usual and customary manner pursuant to Texas Real Estate Commission regulations.

and (b) for reasonable and necessary expenditures, which were first approved by the United States, to protect and preserve the value of the property.

Brantley and any occupants of 442 Marshall Road, Southlake, Texas, and all other persons acting in concert with, or on behalf of Brantley, are hereby permitted to remain in the house while it is on the market and in the process of being sold and are hereby restrained and enjoined from interfering in any way with the Receiver, or with the Receiver's efforts to comply with its obligations under this Order, and any violation of this order may result in a fine, incarceration, or both.

Within 10 days from the entry of this order, Brantley shall provide keys to 442 Marshall Road, Southlake, Texas and all associated buildings thereon to the Receiver to allow for access. Brantley shall allow the current furnishings to remain in the property for staging purposes during marketing and sale. Brantley shall, in good faith, assist with the sale and maintain the premises, including the interior, garage, exterior and any yard, in an appropriate condition to show to potential buyers and pay the utility bills, HOA fees, and any other normal monthly expenses of the property while the property is for sale until closing. If Brantley or any occupant of the residence violates any term or condition of this order, USMS shall notify that occupant that s/he has ten days to correct violation(s). If Brantley or any occupant fails to correct the violations cited by the USMS within that time period, the United States may immediately petition the Court with notice to the occupants for orders to remove all persons occupying the property.

The net sale proceeds, over and above the amount necessary to pay off the amount due to Anna Brantley as her protected interest,⁷ any liens, including any child-support lien, taxes, and

⁷ In submissions to the Court and at the latest hearing, the parties have agreed to the proper methodology to be used in calculating Anna Brantley's protected interest. As of March 26, 2018, the agreed upon amount due Anna Brantley is 25.31% of the net equity in the property. However, according to the government, this calculation is an estimate and the value is to be recalculated on the date of the actual sale. Thus, once the house is sold, the government

other customary and reasonable closing costs and fees, shall be deposited with the Clerk of the Court, with the following exception: if the property sells and closes within 90 days of the Receiver listing the property, then 8% of the net sale proceeds shall be paid to Brantley; if the property sells and closes more than 90 but less than 150 days of the Receiver listing the property, then 5% of the net sale proceeds shall be paid to Brantley; if the property sells and closes more than 150 but less than 180 days of the Receiver listing the property, then 3% of the net sale proceeds shall be paid to Brantley. If the property does not sell and close within 180 days of the Receiver listing the property, then all of the net sale proceeds will go to the Clerk of the Court without any consideration going to Brantley.

III. The Court orders Brantley to make installment payments of at least \$2,059 per month.

Finally, 18 U.S.C. § 3664 and/or 28 U.S.C. § 3204 authorize the court to order or adjust installment payments upon review of a defendant's economic circumstances. *See, e.g., United States v. Hosking*, 567 F.3d 329, 335 (7th Cir. 2009) (payment schedule under § 3664); *United States v. Miles*, 310 F. App'x 943 (8th Cir. 2009) (installment payment order under § 3204).

Brantley's current payment plan requires him to make monthly payments of at least \$1,500, which he has done. Yet the government has shown that he has the ability to pay an additional amount per month towards his restitution by reducing excessive spending on unnecessary or unreasonable expenses. Based on information received from the government and Brantley, the Court orders Brantley to make monthly installment payments of at least \$2059 per month starting with the payment due in July 2018.

and Defendant are to work together to calculate the amount due Anna Brantley using the same methodology as previously used.

IV. Conclusion


Based on the foregoing, it is **ORDERED** that the Government's Motion for Finding of Default and/or Resentencing, Avoidance of Fraudulent Transfers, the Sale of Real Property, and Increased Payment Schedule [doc. 66] is **PARTIALLY GRANTED** in that:

- (A) The Postnuptial Agreement between Lonnie Brantley and his spouse, Anna Brantley, is declared null and void under 28 U.S.C. §§ 3304 and 3306;
- (B) The real property located at 442 Marshall Road, Southlake, Texas shall be sold by the Receiver pursuant to the details contained in section II of this Order;
- (C) Defendant shall, starting with the monthly payment due in July 2018, begin making monthly installment payments of at least \$2059.00 by certified checks bearing case number "4:15-CR-225-BJ" made payable and mailed to the Clerk of the Court, United States District Court for the Northern District of Texas, 1100 Commerce Street, Room 1452, Dallas, TX 79401-4091; and
- (D) All other requested relief is **DENIED**. However, upon notice from the United States Probation Office or the United States Attorney's Office that Brantley has failed to comply with any terms of this order, the Court may issue a bench warrant for his arrest, and set a hearing for revocation of his probation, and resentencing.

It is further **ORDERED** that Brantley's Motion for Extension of Time is **DENIED** [doc.

78].

SIGNED May 21, 2018.



JEFFREY L. CURETON
UNITED STATES MAGISTRATE JUDGE