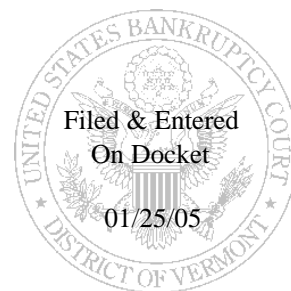


**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT**

---

**In re:****LAUREN JO CHASE,  
Debtor.****Chapter 13 Case  
# 02-10582**

---

**JAN M. SENSENICH et al,  
Plaintiffs,****v.****ROBERT MOLLEUR,  
Defendant.**

---

**Adversary Proceeding  
# 03-1058****ORDER****DIRECTING PARTIES TO ADDRESS OUTSTANDING LEGAL ISSUES**

The Joint Pre-Trial Statement recently filed in the instant adversary proceeding (doc # 30) indicates that there are no contested legal issues to be addressed at the trial to be held on Friday, January 28<sup>th</sup>. This order is issued to point out that the Court intends to address legal issues in its ruling on the merits of this adversary proceeding, to direct the parties to address those issues at the trial and to offer the parties the opportunity to submit memoranda of law on the legal issue presented.

**Procedural Background**

The above-referenced adversary proceeding (the “Current Adversary”) asserts a claim to avoid an allegedly fraudulent transfer under 11 U.S.C. § 548(a)(1) and 9 V.S.A. § 2289(a). The parties to the Current Adversary (hereinafter the “Parties”) were also the parties in a previous adversary proceeding with the same caption, numbered 02-1054 (the “First Adversary”). In the First Adversary, the Court considered a Motion to Dismiss the complaint on the ground, *inter alia*, that the Complaint failed to state a cause of action upon which relief could be granted (the First Adversary, doc. # 10). In an order dated September 29, 2003, the Court denied the Motion to Dismiss in the First Adversary, ruling that the pertinent issue before the Court was whether the Plaintiffs pleaded a cause of action sufficient to proceed with the First Adversary on a novel and unique question of law that has not been previously addressed by either the state courts of Vermont or this Court, namely, whether a transfer effected under Vermont’s strict foreclosure procedure was susceptible to avoidance as a fraudulent conveyance. The Court did not reach the question of whether the Plaintiffs could ultimately prevail or even whether a Vermont strict foreclosure transfer could ever be avoided as a fraudulent conveyance. Rather, the Court ruled only that the Plaintiff was entitled to proceed to present his case (the First Adversary, doc. # 16). The Court found that the Plaintiff raised a colorable argument and that he should be permitted to present his case in support of the position that a transfer (a) effected through a strict foreclosure proceeding and (b) for less than reasonably equivalent value is subject to avoidance under § 548.

On December 24, 2003, the Court certified this question of the vulnerability of strict foreclosure transfers to fraudulent conveyance avoidance to the Vermont Supreme Court, and on February 17, 2004, the Vermont Supreme Court issued a decision declining to consider the issue (the First Adversary, doc.## 36, 39).

The First Adversary was dismissed without prejudice, on April 12, 2004, to allow the Plaintiff to assert a separate cause of action on the basis that the alleged transfer occurred post-petition. (In the First Adversary, the Plaintiffs had pleaded it occurred post-petition, see First Adversary, doc. # 48.) Shortly thereafter, the Plaintiffs filed the Current Adversary alleging that the strict foreclosure transfer occurred pre-petition, was for less than reasonably equivalent value, and was avoidable as a fraudulent conveyance (doc. #1).

The Court issued an Order and Memorandum of Decision herein granting partial summary judgment for the Plaintiffs on the basis that the “transfer” under § 548 occurred pre-petition (docs. ## 22 and 23). Before the Court were the Parties’ arguments regarding the elements of a § 548 cause of action. The Court was not asked to determine whether the Plaintiff could prevail under § 548 in a strict foreclosure context.

On January 24, 2005, the Parties filed a Joint Pre-Trial Statement that avers that there are no outstanding contested legal issues. However, there has been neither a stipulation nor a determination addressing the fundamental legal issue raised herein.


#### Scope of Trial and Arguments to Be Presented

The substantive legal issue of whether the subject transfer, effected under the Vermont strict foreclosure statute, may be avoided as a fraudulent transfer, as well as the question of whether there was reasonably equivalent value here, are both yet to be determined. Neither issue has been decided in either the First Adversary or the Current Adversary. Moreover, the parties have not yet submitted legal argument on this issue in the Current Adversary.

Accordingly, IT IS HEREBY ORDERED, that the Parties shall present legal arguments and authority to the Court at the trial on this matter as to whether: (1) a transfer effected pursuant to Vermont’s strict foreclosure law procedure may be avoided under § 548 or 9 V.S.A. § 2289(a), as a general matter; and more specifically, if so, (2) whether the subject transfer meets the criteria for avoidance under either § 548 or 9 V.S.A. § 2289(a). The Court will consider a bench memoranda from either party on this issue if filed by noon on January 27<sup>th</sup>, and will also consider any post-trial memoranda of law filed by February 7, 2005.

**SO ORDERED.**

January 25, 2005  
Rutland, Vermont

  
\_\_\_\_\_  
Colleen A. Brown  
United States Bankruptcy Judge