

**United States Bankruptcy Court  
District of New Mexico**

**Document Verification**

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**Case Number:** 99-01194  
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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW MEXICO

In re:

GALLUP AUTO SALES, INC.,  
Debtor.

No. 7-99-12361 SF

ROBERT FINCH, Trustee,  
Plaintiff,

v.

Adv. No. 99-1194 S

JERRY Egeland,  
Defendant.

**MEMORANDUM OPINION AND DECISION**

This matter came before the Court for trial on the merits of the Trustee's Complaint to Avoid Preferential and Fraudulent Transfer and for Turnover of Property. The Trustee appeared through his attorney Robert Finch. Defendant Jerry Egeland appeared through his attorney Mark Brad Perry. This is a core proceeding. 28 U.S.C. § 157(b)(2)(F) and (H). The Court finds that the transfer in this case is an avoidable preference. Therefore, the Court's decision will not discuss the Trustee's alternative theory of fraudulent transfer.

**FACTS**

Debtor Gallup Auto Sales ("GAS") was the registered owner of a Cessna Airplane. GAS transferred ownership of the plane to Egeland in 1998. The GAS bankruptcy was filed on April 20, 1999.

Egeland is the sole shareholder and officer of Gallup Auto Sales, Inc., the debtor. In 1964 or 1965 he made a "capital loan" to debtor. Since that time the amount has fluctuated from

year to year; some years Egeland received interest, some years he received a "check", and sometimes he put money back into the company. He remembers that he put \$350,000 to \$400,000 into the company under this loan. Egeland knew there were documents evidencing this loan as late as 1977, but does not know if there have been records since that time. Egeland relied on his accountant ("Solga") to do the books, and the last number he remembers being told was that he had a claim for \$153,000, for which he filed a proof of claim in the GAS bankruptcy.

Egeland testified that at some time in February or early March of 1998 Egeland told Solga that he wanted the Cessna and that Solga should "take it out of the loan". The next day Egeland asked Virginia Castillo, an employee, to take care of the paperwork to transfer the airplane. At some later time not disclosed by the documents or testimony, she mailed documents to the FAA. For some reason also not disclosed by the record, the FAA, perhaps two months later, returned the documents for correction. Egeland did not produce any evidence, such as copies of the original application, transmittal letters to the FAA, correspondence from the FAA, copies of any resubmitted FAA application, any documents regarding registration of the airplane with the State of New Mexico, or anything else that would have allowed the Court to find when the application was submitted to the FAA. Plaintiff's exhibit 9 is a title status report for the

Cessna; it shows that the date of Egeland's purchase was August 1, 1998. Attached to the title status report is an "Aircraft Registration Application" FAA AC Form 8050-1, listing Egeland as owner, and dated August 1, 1998. Exhibit 9 also states "Documents filed 10-13-99 with the FAA but not yet recorded and the parties include Frontier Motor Company and J. Egeland."

Egeland signed GAS's Statement of Financial Affairs that was filed in GAS's bankruptcy case on June 1, 1999. Question 10, "Other Transfers" states that GAS transferred a Cessna to Jerry Egeland in August, 1998.

Egeland testified that as consideration for the transfer of the airplane he had Solga reduce his loan amount by \$50,000 and he assumed a \$30,000 debt against the airplane, depleting his wealth by \$80,000. Egeland had no documents demonstrating that this \$50,000 reduction to the loan was ever made. Plaintiff's Exhibit 9 states that there were "no liens of record" at the FAA, although it does not purport to cover any liens, claims, encumbrances or judgments that have not been filed with the FAA or have not been indexed by the FAA; presumably the notation about documents filed 10-13-99 are the Ron Bordage/Frontier Motors filing, discussed below.

Merlin Dickson testified on behalf of the defendant as an expert in the aircraft business. In his opinion, the plane was currently worth about \$100,000. He noted that the value had

appreciated since 1998, so that it probably would have been worth \$80,000 or \$85,000 in 1998. Jim Dean testified as plaintiff's expert in the aircraft business. He calculated the plane's value as of October 1998 and April 2000. His 1998 value was \$77,900 wholesale and \$94,300 retail. In his opinion the value as of August, 1998 would be substantially the same as October, 1998. As of April, 2000 he valued the plane at \$115,000 retail and \$95,000 wholesale. In theory, based on the alleged repairs and maintenance work done on the plane since the transfer, he also stated that he would have paid wholesale less about \$17,100 if he were purchasing the plane in 1998 and if, in fact, it needed these repairs and maintenance. No documentary evidence was introduced that these costs were actually incurred after the transfer of the plane. Egeland testified that he incurred a \$16,000 debt performing an annual maintenance on the plane; this \$16,000 was paid by Bordage, who included it in his lien claim (see below), which is dated April 4, 1998. Therefore, this maintenance had already been performed by August 1, 1998. Egeland also testified that he paid \$800 for a new transponder. He also testified that he had made cosmetic repairs to the plane.

The Court finds that the value of the plane on August 1, 1998 was \$80,000 less the cost of the transponder, or \$79,200<sup>1</sup>.

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<sup>1</sup>Since Plaintiff has prayed in the complaint for the return of the aircraft but not for payment of its value, the Court need

Ron Bordage, owner of Frontier Auto<sup>2</sup> and owner of Pronto (an airplane refurbishing business) testified regarding work he did on the plane. Based on the work performed he claimed a lien against the airplane. Defendant's Exhibit A is an extremely poor, almost unreadable, copy of the lien claim. This document states that it is for equipment furnished to "Jerry Egeland" in the amount of \$36,023.59. It is dated and notarized April 4, 1998. The claim of lien refers to an attached invoice, but this invoice was not part of the exhibit introduced at trial. Exhibit A contains no recording information. Bordage testified that he filed the lien with the Secretary of State or the County Clerk in April, 1998, he did not know which. He also testified that, after some delay occasioned by him not knowing the FAA regulations, he did file his lien claim with the FAA. He did not

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not determine the current value of the aircraft.

<sup>2</sup>Ron Bordage and Jerry Egeland have known each other for 25 years. Bordage testified that he had done business with Egeland. Egeland testified that he had never been in business with Bordage, but that he had also used the Frontier name, had shipped vehicles to Bordage, that Bordage had sold these vehicles, and had paid him for them. Plaintiff's exhibit 10 showed GAS checks totaling \$251,965.06 written between August 17, 1998 and February 1, 1999 made out to "Frontier Motors." When questioned which Frontier this was, Egeland testified that some were to his Frontier, and some were to Bordage's Frontier, and that he kept track because he knew his inventory. The evidence on this issue is so confused the Court makes no findings related to these transfers. What is clear, however, is that there was a business relationship between Bordage and Egeland, and the Court finds that Bordage is not unbiased.

have copies of the recorded documents with him, and defendant did not otherwise seek to introduce these documents. Presumably this lien is the item referenced in Plaintiff's exhibit 9 as being filed with the FAA on October 13, 1999. There is no evidence that this \$36,000 debt has ever been paid. Egeland testified that Bordage, exercising his lien claim, had repossessed the plane during the pendency of this adversary proceeding.

On November 1, 1996, Norvin Lee and Bernita Garcia filed a lawsuit against GAS, Montana Mining, Inc. and Jerry Egeland, claiming violations of the Federal Odometer Act, the New Mexico Unfair Trade Practices Act, fraud, and negligent misrepresentation in the United States District Court for the District of New Mexico. During the summer of 1998 the District Court set a jury trial for November 16, 1998. On June 23, 1999, the District Court entered judgment on the complaint. An earlier judgment entered May 19, 1999 awarded plaintiffs fees and costs of \$50,483. The judgment bears interest. Proof of Claim #13 represents this legal action, and is in the amount of \$478,709.66 in judgments plus an estimated \$60,000.00 yet to be awarded in fees and costs.

On March 5, 1997, Bobby Clark, Lavina M. Clark, Norvin Lee and Bernita Garcia filed an Amended Class Action Complaint and Jury Demand in the United States District Court for the District of New Mexico. The complaint alleges violations of the Truth in

Lending Act, Regulation Z, New Mexico Motor Vehicle Sales Finance Act, the New Mexico Unfair Trade Practices Act, and the New Mexico Motor Vehicle Dealers Franchising Act. On March 2, 1998, the District Court entered partial summary judgment on the Truth in Lending Act. On May 20, 1998, the District Court set a jury trial to commence on December 1, 1998. This lawsuit generated several hundred proofs of claim in the GAS bankruptcy.

The second page of Plaintiff's exhibit 16 is a partial balance sheet for GAS as of October 15, 1998. Egeland testified that he met with Solga and his attorney to prepare this document in response to a request in the pending litigation. The balance sheet shows \$457,446.47 of assets, consisting of \$18,057.97 cash, \$151,448.50 real estate contract receivable, and \$287,940.00 inventory. It shows total liabilities of \$1,596.03 consisting of accounts payables, and stockholder equity of \$455,850.44. Egeland testified that the \$287,000 inventory figure was not based on market values, but rather was the remaining balances owed on the retail installment contracts used to finance the cars which had been repossessed. He testified that there was another balance sheet somewhere, but the defendant did not seek to make this document part of the record. Solga, the accountant, also testified regarding the balance sheet. He admitted that the Egeland capital loan was not reflected on the balance sheet, nor were the pending lawsuits, and that an accurate balance sheet



should include those items. The Court also finds that the Bordage airplane repair invoice of approximately \$36,000 should have been included.

Plaintiff's exhibit 11 consists of GAS's bank statements for August, 1998 through April, 1999. The August statement shows that the bank balance on July 31, 1998 was \$8,782.59. An examination of the subsequent statements shows that two checks were outstanding on July 31, 1998: #2490, dated June 11, 1998 in the amount of \$3,500.00 and #2494, dated June 23, 1998 in the amount of \$1,500.00. These checks cleared in August. Therefore, the Court finds that cash as of August 1, 1998 was \$3,782.59.

Egeland testified that the real estate contracts were paying about \$3,500 per month to GAS. Exhibit 11, GAS's bank statements, show deposits of \$3,548.78 on October 14, 1998, September 8, 1998, and August 3, 1998. Giving defendant the benefit of the doubt that these three payments went 100% to principal, the value of the real estate contracts would have been \$162,094.84 on August 1, 1998 (\$151,448.50 plus 3 payments of \$3,548.78 each).

Egeland filed a proof of claim in the GAS bankruptcy for \$153,000. Presumably this figure takes into account the \$50,000 reduction of his claim used to purchase the airplane. Therefore, the balance sheet should include a \$203,000 liability to Egeland.

Plaintiff's exhibit 5 is a detailed billing statement from Hynes, Hale & Gurley to GAS for legal services in the lawsuits. The statement shows a balance due on March 24, 1999 of \$73,200.90. However, subtracting out billing entries net of payments from August 1, 1998 through March 24, 1999 shows that a balance was due and owing on August 1, 1998 of \$6,755.72, which properly should be on the balance sheet.

The Court has examined the proofs of claim on file. The following claims have been presented for debts owed as of August 1, 1998:

<b>Proof of claim</b>	<b>date debt incurred</b>	<b>amount</b>
1	July 16, 1998	\$3,905
3 & 4 (appear to be duplicates)	September 26, 1996	4,937
7	Egeland's "capital loan", 25 years old	153,000
10	August 30, 1997	2,000
11	October 14, 1997	1,847
12	February 25, 1998	50,000
13	Lee case, discussed above, filed 1996	478,710
14 to 101, all identical claims of \$1,000 except name of claimant	various; partial summary judgment entered March 2, 1998	87,000
102 to 296, all identical claims of \$150 except name of claimant	various; partial summary judgment entered March 2, 1998	<u>29,100</u>

	TOTAL	\$	<u>810,499</u>
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Solga testified that GAS had not done its income tax returns for fiscal years ending 1996, 1997 or 1998. Therefore, any tax liabilities are unknown.

**CONCLUSIONS OF LAW**

**1. Statutes and Regulations**

Bankruptcy Code Section 547 provides, in relevant part:

(b) Except as provided in subsection (c) 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.

...

(e) (1) For the purposes of this section -

...

(B) a transfer of a fixture or property other than real property is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee.

(2) For the purposes of this section ... a transfer is made -

- (A) at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 10 days after, such time, ... ;
- (B) at the time such transfer is perfected, if such transfer is perfected after such 10 days.

Bankruptcy Code Section 544(a)(1) provides:

The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by -

- (1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists.

Bankruptcy Code Section 101(31) defines "insider" as including:

- (B) if the debtor is a corporation -
  - (i) director of the debtor;
  - (ii) officer of the debtor;
  - (iii) person in control of the debtor;
- ...
- (E) affiliate, or insider of an affiliate as if such affiliate were the debtor.

Bankruptcy Code Section 101(2) defines "affiliate" as:

- (A) entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor.

Bankruptcy Code Section 101(32) defines "insolvent" as:

- (A) ... financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation.

"Debt" is defined as liability on a claim. 11 U.S.C. § 101(12).

Bankruptcy Code Section 101(5) provides that "claim" means -

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

49 U.S.C. § 44107 contains, in part:

(a) The Administrator of the Federal Aviation Administration shall establish a system for recording -

(1) conveyances that affect an interest in civil aircraft of the United States.

...

(d) The Administrator shall-

(1) keep a record of the time and date that each conveyance ... is filed and recorded with the Administrator; and

(2) record each conveyance ... filed with the Administrator, in the order of their receipt, and index them by -

(A) the identifying description of the aircraft ...; and

(B) the names of the parties to each conveyance.

49 U.S.C. § 44108 provides, in part:

(a) Until a conveyance ... that may be recorded under section 44107(a)(1) or (2) of this title is filed for recording, the conveyance ... is valid only against -

(1) the person making the conveyance ...;

(2) that person's heirs and devisees; and

(3) a person having actual notice of the conveyance...

(b) When a conveyance ... is recorded under section 44107 of this title, the conveyance ... is valid from the date of filing against all persons, without other recordation.

49 U.S.C. § 44109 provides:

(a) A person having an ownership interest in an aircraft for which a certificate of registration was issued under section 44103 of this title shall file a notice with the Secretary of the Treasury that the Secretary requires by regulation, not later than 15 days after a sale, conditional sale, transfer, or conveyance of the interest.

14 C.F.R. § 49.19 provides:

A conveyance is filed for recordation upon the date and at the time it is received by the FAA Aircraft Registry.

Sections 64-1-1 et seq. is the New Mexico Aircraft Registration Act. Section 64-4-4 provides:

All aircraft based or hangared within this state shall be registered annually with the division, and a registration fee shall be paid as approved in the Aircraft Registration Act.

Section 64-4-5 provides:

(A) The owner or lessee of an aircraft, whichever is in possession, shall register the aircraft prior to March 1 of each year.

(B) Any person who purchases, leases or otherwise acquires an aircraft or brings one into the state after March 1 shall register the aircraft within fifteen days after purchase, lease, acquisition or entering the state.

Section 64-4-7 provides:

The division shall prepare the applications for registration certificate [certificates] and registration numbers to provide for a uniform, statewide registration of aircraft and shall keep in the office of the division in Santa Fe a current index of aircraft registration.

## **2. Discussion**

### **A. The transfer was to a creditor.**

Jerry Egeland filed a proof of claim in this case for the balance of his capital loan. The consideration paid by Egeland for the airplane was a reduction in his capital loan. He is therefore a creditor. See also Complaint ¶7, admitted in answer.

**B. The transfer was for an antecedent debt owed by the debtor before such transfer was made.**

The capital loan dated back to 1964 or 1965, as adjusted annually by the accountant. The Court therefore finds the transfer was for an antecedent debt. See also Complaint ¶7, admitted in answer.

**C. The transfer was made while GAS was insolvent.**

The Trustee has the burden of proving that the debtor was insolvent on the date of the transfer. 11 U.S.C. § 547(g); Payne v. Clarendon National Insurance Company (In re Sunset Sales, Inc.), 220 B.R. 1005, 1017 (10<sup>th</sup> Cir. B.A.P. 1998). The main issue in this case is how to determine GAS's solvency as of August 1, 1998, the date the Court finds the transfer to have taken place. Egeland claims that the pending lawsuits should be discounted or ignored, because they were contingent, disputed, unliquidated debts. Plaintiff argues that the actual liability is the best evidence. The Court agrees with Plaintiff.

First, from a purely statutory viewpoint, solvency is determined using a balance sheet approach. See 11 U.S.C. § 101(32)(sum of debts is greater than fair value of entity's property); Gilman v. Scientific Research Products, Inc. of Delaware (In re Mama D'Angelo, Inc.), 55 F.3d 552, 554 (10<sup>th</sup> Cir. 1995). Under this approach, the Court should look at the "debts", i.e. the liability on "claims". 11 U.S.C. § 101(12).

"Claims" include contingent, disputed, and unliquidated claims. 11 U.S.C. § 101(5). Therefore, under the balance sheet approach all claims should be considered in the analysis. Hunter v. Society Bank & Trust (In re Parker Steel Company), 149 B.R. 834, 844 (Bankr. N.D. Oh. 1992) ("Since claims may be disputed or contingent, disputed or contingent liabilities must be included in determining total indebtedness for purposes of determining insolvency."). Accord Tri-Continental Leasing Corp., Inc. v. Zimmerman, 485 F.Supp. 495, 499-500 (N.D. Ca. 1980) (California Uniform Fraudulent Conveyance Act defines debt as including all claims; pending lawsuits must be treated as an existing debt.)

Second, the Court of Appeals for the Tenth Circuit and the Bankruptcy Appellate Panel of the Tenth Circuit have both approved of a hindsight approach to calculations of insolvency. See Mama D'Angelo, 55 F.3d at 556:

[W]e 'may consider information originating subsequent to the transfer date if it tends to shed light on a fair and accurate assessment of the asset or liability as of the pertinent date.' In re Chemical Separations Corp., 38 B.R. 890, 895-96 (Bankr. E.D. Tenn. 1984). Thus, it is not improper hindsight for a court to attribute current circumstances which may be more correctly defined as current awareness or current discovery of the existence of a previous set of circumstances.

and Sunset Sales, 220 B.R. at 1016-17 ("Nor was it improper for the bankruptcy court to disregard the Debtor's book value of



certain of its liabilities based on the actual amount of the liabilities.")

With these rules in mind, the Court finds that GAS was insolvent on August 1, 1998. The balance sheet as of that date would be:

Assets		Liabilities & Deficit	
Cash	\$ 3,783	Proofs of Claim total	\$ 810,499
REC receivable	162,095	Additional Egeland claim	50,000
Inventory October 15, 1998	287,940 <sup>3</sup>	Legal fees	6,756
Inventory adjustment <sup>4</sup> to August 1, 1998	3,629	Bordage bill	<u>36,000</u>
Airplane	<u>79,200</u>	Total liabilities	903,255
		Deficit	<396,608>
Total Assets	\$ <u>536,647</u>	Total	\$ <u>536,647</u>

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<sup>3</sup>This number is taken from the October 15, 1998 balance sheet which all witnesses agree was thrown together at the request of plaintiff's attorney. No actual physical inventory was done and this figure represents more of an accounting convenience than reality. The Court assumes the real value would be less.

<sup>4</sup>Neither party submitted income statements for any period. Based on Exhibit 11, however, the Court can make certain assumptions. Total deposits for the period August 1, 1998 through October 15, 1998 were \$172,975.38. Subtracting from this the real estate contract receipts (\$10,646.34) leaves \$162,329.04, presumably the revenue from sales. During this same time period checks were written to Frontier Motors, Ziems Ford Corners, and Montana Mining Finance in the amount of \$158,700, which seem to be purchases of inventory. Therefore, it appears inventory remained rather stable during the time period. However, the Court will add the whole amount of the difference between revenues and costs as an addition to inventory (\$162,329 - \$158,700 = \$3,629).

D. **The transfer was made between ninety days and one year before the date of the filing of the petition to an insider.**

1. **Egeland is an insider.**

Egeland testified that he is an officer of GAS.

Bankruptcy Code section 101(31)(B) makes him an insider. Also, by virtue of his 100% ownership of debtor's stock, he is an affiliate, section 101(2), and therefore an insider, 101(31)(E). See also Complaint ¶ 10 and answer admitting insider status.

2. **The transfer occurred within one year of the petition<sup>5</sup>.**

Plaintiff's exhibit 9 demonstrates that the FAA records show a date of purchase of the plane as August 1, 1998. GAS's Statement of Financial Affairs states that the transfer was made in August, 1998. On the other hand, Egeland testified that the transfer was intended to occur in February or early March of 1998. Solga testified that for accounting purposes the transfer occurred in February or early March, 1998. Despite this testimony, for bankruptcy purposes the transfer took place on August 1, 1998. See 11 U.S.C. § 547(e)(2)(B)(transfer is made when perfected, if perfection is more than ten days after

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<sup>5</sup>Egeland admitted in his answer that the airplane was transferred to him between ninety days and one year before the bankruptcy was filed. See Complaint ¶ 9 and answer, and Complaint ¶ 15 and answer. However, Egeland disputed this at trial and offered evidence to the contrary.

transfer takes effect). Until the conveyance was recorded with the FAA a third party could obtain a superior interest in the plane. See Philko Aviation, Inc. v. Shacket, 462 U.S. 406, 409-10 (1983) ("Section 503(c) [of the Federal Aviation Act of 1958, 49 U.S.C. §§ 44101-44112 and 14 C.F.R. §§ 49.1-55] means that every aircraft transfer must be evidenced by an instrument, and every such instrument must be recorded, before the rights of innocent third parties can be affected."); see also 49 U.S.C. § 44108(a). Specifically, under 11 U.S.C. § 544(a)(1) the Trustee could have obtained a superior interest until August 1, 1998.

While it is true that perfection of an interest in an airplane by recording can date back to the time the instrument is filed, (i.e., received by the FAA), see In re Equipment Lessors of Pennsylvania, 235 B.R. 361, 365 (E.D. Pa. 1999) ("The Act provides that, as long as it is eventually recorded, any conveyance of an interest in aircraft is effective against all other persons on the date it is filed for recording with the FAA."), in this case Egeland failed to provide sufficient evidence that the relation back doctrine should apply, or if it did, to what date. First, the Court finds his testimony that the transfer was meant to take place in February or early March 1998, coincidentally 13 months before the bankruptcy petition, too self-serving to have much credibility. Second, Egeland admitted that there were no contemporaneous corporate records documenting

the transfer; rather, the transfer was purportedly based upon a conversation he had with the debtor's accountant "at the gym". Third, and perhaps most important, is the total lack of any documentation presented at trial regarding the FAA transfer process.

[T]he general rule is that 'where relevant information ... is in the possession of one party and not provided, then an adverse inference may be drawn that such information would be harmful to the party who fails to provide it.'

McMahan & Company v. PO Folks, Inc., 206 F.3d 627, 632 (6<sup>th</sup> Cir. 2000)(quoting Weeks v. ARA Services, 869 F.Supp. 194, 195 (S.D. N.Y. 1994)). The Court does not find it credible that there would be no documents supporting Egeland's story such as FAA or state registration documents, transmittal letters, or correspondence<sup>6</sup>; as purchaser of the airplane, Egeland is the logical person to have access to this information. The only evidence presented was the weak oral testimony of the transferee.

A failure to produce evidence can create an inference that, had the evidence been presented, the evidence would establish a case for the opposing party. The particular facts of the case at issue will impact the strength of that inference. As stated in Interstate Circuit, Inc. v. United States: "The production of weak evidence when strong is available can only lead to the conclusion that the strong would have been adverse.

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<sup>6</sup>During testimony Egeland was asked if there were any records showing that his loan amount was reduced. He responded that Solga said he would put a note in the file. No files were produced at trial, however.

Silence then becomes evidence of the most convincing character."

Whiteside v. United States, 26 Cl.Ct. 564, 575 n. 3 (1992)

(citations omitted).

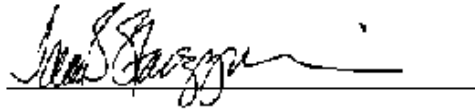
One final point is deserving of mention. 49 U.S.C. § 44109(a) requires that notice be given to the FAA within 15 days after a sale, conditional sale, transfer, or conveyance. Section 64-4-5 NMSA has a similar requirement. The only strong evidence on registration is page 2 of plaintiff's exhibit 9, the "Pink copy" of FAA Aircraft Registration Application form AC 8050-1, which shows a conveyance date of August 1, 1998. The Court should therefore assume that August 1, 1998 is within 15 days of the actual conveyance. In sum, the Court finds that the transfer occurred on August 1, 1998.

**E. The transfer enabled Egeland to receive more than he would otherwise receive.**

Plaintiff's exhibits 19 and 20 are mathematical computations of projected dividends in the GAS bankruptcy. They demonstrate that unsecured claims will not be paid in full. Therefore, Egeland's claim for the \$50,000 applied to the airplane would not be paid in full, and he has therefore received more than he would in a chapter 7 liquidation.

**Conclusion**

The Plaintiff has met his burden of proof with respect to all elements of a preferential transfer. Judgment should be entered in favor of plaintiff, and against defendant Jerry Egeland, ordering a surrender of all of Egeland's interest in the airplane<sup>7</sup> and a turnover of all keys, logbooks, titles, registrations, and documents and records related to the airplane.

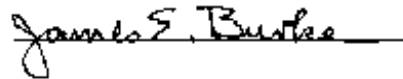


Honorable James S. Starzynski  
United States Bankruptcy Judge

I hereby certify that, on the date stamped above, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered or mailed to the listed counsel and parties.

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<sup>7</sup>The Court does not need to, and does not, make any finding or ruling on the existence, validity, extent, priority or enforceability of the Bordage/Frontier lien on the airplane.