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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

CRYSTAL WINDOWS & DOORS, IL CORP, )  
)  
)  
Plaintiff, )  
v. )  
)  
STANISLAW BAFIA, ELZBIETA SCABER, )  
f/k/a ELZBIETA BAFIA and, )  
CHICAGO TITLE AND TRUST COMPANY )  
As Trustee of Trust Nos. 8002354365, )  
8002354366, 8002354367, 8002354369, )  
Defendants. )

Case No. 10 L 10561

All property owned by the judgment debtor Stanislaw Bafia, including but not limited to, the following properties: 6608 N. Ramona, Lincolnwood, IL, PIN 10-33-313-028; 4562 N. Elston, Chicago, IL, PIN 13-15-224-036; 1502-1510 East 74<sup>th</sup> Street, Chicago, IL, PIN 20-26-223-008; 7300 South May, Chicago, IL, PIN 20-29-216-024; 7704-7706 South Emerald, Chicago, IL PIN 20-28-314-017. See Attached Judgment for recording.

The last known address of Stanislaw Bafia is 4562 N. Elston, Chicago, IL 60630.

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

Crystal Windows & Doors,	)	
	)	
Plaintiff,	)	No. 10 L 10561
	)	
v.	)	Calendar S
	)	
Stanislaw Bafia, Elzbieta Scaber,	)	Judge Raymond W. Mitchell
f/k/a Elzbieta Bafia, and Chicago	)	
Title and Trust Company, as	)	
Trustee of Trust Nos. 8002354365,	)	
8002354367, 8002354369,	)	
	)	
Defendants.	)	

**ORDER**

This case is before the Court following a bench trial with the parties present in person and through counsel, testimony taken and concluded with the Court having admitted certain exhibits into evidence and having heard arguments advanced on behalf of the parties. In making this judgment, the Court has reviewed its notes and the exhibits offered and received into evidence; it has listened to the witnesses and observed their manner and demeanor while testifying; and the Court has considered the witnesses' testimony in light of all the relevant, admissible evidence.

**Findings of Fact**

Plaintiff Crystal Windows & Doors, an Illinois corporation engaged in the business of selling custom-made windows, entered into an oral contract for the sale of windows with E.S. Windows, Inc. in June 2003. Defendant Stanislaw Bafia, the president and sole shareholder of E.S. Windows, entered into a written guaranty with Crystal Windows pursuant to which Bafia agreed to guarantee E.S. Windows's payment of its account with Crystal Windows up to \$80,000. Crystal Windows alleges that from June 2003 to February 24, 2010, Crystal Windows sent E.S. Windows its invoices. However, by June 2008, E.S. Windows had stopped paying its debts to Crystal Windows as they became due. Crystal Windows contends that despite E.S. Windows's inability to pay its debts, Bafia continued to receive distributions from E.S. Windows. Conversely, Bafia asserts that Crystal Windows supplied E.S. Windows with defective windows, and that as a result, his obligation to pay the debts was discharged. Bafia voluntarily dissolved E.S. Windows, Inc.

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with the Secretary of State in April 2010; Bafia incorporated a new Illinois corporation by the same name in October of the same year.

Crystal Windows filed a complaint against Bafia on September 15, 2010. On November 24, 2010, Bafia filed a petition for dissolution of marriage from his wife of 25 years, Elzbieta Bafia. Less than three weeks later, a Judgment for Dissolution of Marriage was entered, which incorporated a previous agreement between the Bafias by which Stanislaw conveyed five properties, including the marital home and E.S. Windows's office, to three separate land trusts at Chicago Title and Trust Company, a co-defendant in the action, that each listed Elzbieta as the beneficiary. Additionally, although under the marriage settlement agreement Bafia was to pay Elzbieta \$1,950 per month for child support and rent on the marital home property, Crystal Windows alleges that since the divorce, Bafia has used E.S. Windows funds to write checks to Elzbieta for an average of over \$12,000 per month above what was required under the agreement. Crystal Windows claims that these transfers to Elzbieta were made at a time when E.S. Windows was insolvent, and that Bafia's divorce was a mere sham intended to avoid his debts owed to Crystal Windows. According to Bafia, the divorce was the result of the deterioration of his marriage, and these excess payments were made to help fund his older daughter's medical treatment and his younger daughter's competitive figure skating and piano playing activities.

As a result of the transactions between the two parties, Crystal Windows contends that it is owed \$112,760.90 for breach of fiduciary duty, or in the alternative \$80,000 under the guaranty agreement and \$30,567.30 in attorney's fees. Further, Crystal Windows wishes to void the transfers of real property made by Bafia to Elzbieta under the marriage settlement agreement. Bafia claims that E.S. Windows is owed damages in excess of \$43,000 as a result of the defective windows Crystal Windows provided E.S. Windows for two projects.

## Conclusions of Law

The first question to be addressed is whether Defendant Bafia is liable to Plaintiff for breach of the guaranty agreement. In order to state a claim for breach of contract, a plaintiff must show: (1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) a breach of the subject contract by the defendant; and (4) that the defendant's breach resulted in damages. *Unterschuetz v. City of Chicago*, 346 Ill. App. 3d 65, 69 (1st Dist. 2004). In an action for breach of contract, it is necessary for the plaintiff to plead and prove that he has performed all conditions precedent to the contract. *Pathman Constr. Co. v. Hi-Way Elec. Co.*, 65 Ill. App. 3d 480, 486 (1st Dist. 1978).

In this case, there is no dispute that E.S. Windows and Crystal Windows entered into an enforceable contract, that Crystal Windows delivered windows to

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E.S. Windows, that E.S. Windows has failed to pay its invoices, and that E.S. Windows's breach has resulted in damages for Crystal Windows. Further, there is no dispute that Defendant has failed to satisfy his obligations under the guaranty agreement. Defendant claims that because some of the windows Plaintiff provided him were defective, E.S. Windows's obligation to pay for them was discharged. At trial, Crystal Windows owner Ann Liang testified that Defendant never complained about defective windows provided for the Coles project, and that she offered to repair the leaky windows at the Lowe project, but that Defendant refused her services. Defendant has failed to offer sufficient evidence of Plaintiff's nonperformance to invalidate its breach of contract claim. Because of this failure of proof, judgment is entered in favor of Plaintiff in the amount of \$80,000, plus \$30,567.30 in attorney's fees.

Next we turn to Plaintiff's breach of fiduciary duty claim. Although corporate officers generally only owe fiduciary duties to the corporation and its shareholders, once a corporation becomes insolvent, the fiduciary duty of an officer is extended to the creditors of the corporation. *Schwendener v. Jupiter Electronics Company, Inc.*, 358 Ill. App. 3d 65, 75 (1st Dist. 2005). When an officer breaches his fiduciary duty by wrongfully converting or misappropriating funds and thereby adversely affecting the relation between the corporation and its creditors, a creditor can maintain an action against the officer personally. *Circle Sec. Agency, Inc. v. Ross*, 99 Ill. App. 3d 1111, 1114 (1st Dist. 1981). Under Illinois law, a debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation. *PharMerica Chicago, Inc. v. Meisels*, 772 F. Supp. 2d 938 (N.D. Ill. 2011). A debtor that is generally not paying its debts as they become due is presumed to be insolvent. *Id.*

At trial, Defendant admitted that in addition to the debt owed to Plaintiff, he owed money to various other creditors, including Wells Fargo and Webster Bank, at the time he transferred title to his real property to Elzbieta in January 2010. However, these were debts owed personally by Stanislaw Bafia; no evidence was presented at trial regarding E.S. Windows's solvency. Although it is clear that E.S. Windows was not paying its debts to Crystal Windows, the existence of one outstanding debt is not enough evidence to establish that it was generally not paying his debts as they became due. Thus, Plaintiff has failed to establish that E.S. Windows owed it a fiduciary duty.

In Count III, Plaintiff asserts that Defendant made an unlawful transfer of property under the Illinois Uniform Fraudulent Transfer Act. Under 740 ILCS 160/5(a)(1) it is unlawful to make a transfer with actual intent to hinder, delay or defraud any creditor of the debtor. 740 ILCS 160/5(a)(1). Under section 160/5(a), a creditor must present clear and convincing proof to establish actual fraud. *Stone v. Ottawa Plant Food, Inc. (In re Hennings Feed & Crop Care, Inc.)*, 365 B.R. 868, 874 (Bankr. C.D. Ill. 2007). If the plaintiff does prove fraudulent intent and thus "fraud in fact," then explicitly the transfer is deemed fraudulent even if it is in exchange

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for “valuable consideration.” *Scholes v. Lehmann*, 56 F.3d 750, 757 (7th Cir. 1995). In determining a debtor’s actual intent, courts consider several badges of fraud. These include whether:

- (1) the transfer or obligation was to an insider<sup>1</sup>;
- (2) the debtor retained possession or control of the property transferred after the transfer;
- (3) the transfer or obligation was disclosed or concealed;
- (4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
- (5) the transfer was of substantially all the debtor's assets;
- (6) the debtor absconded;
- (7) the debtor removed or concealed assets;
- (8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and
- (11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

740 ILCS 160/5(b).

When statutory badges of fraud under the UFTA are present in sufficient number, they may give rise to an inference or presumption of fraud. *In re Phillips*, 379 B.R. 765, 777 (Bankr. N.D. Ill. 2007). Under Illinois law, it is not necessary to demonstrate the existence of a majority of the 11 badges in order to prove a fraudulent conveyance. *Brandon v. Anesthesia & Pain Management Associates, Ltd.*, 419 F.3d 594, 600 (7th Cir. 2005). While a transfer between family members is not proof per se of fraudulent intent, a familial relationship is weighty proof of such intent, for purposes of determining “actual fraud” under the UFTA. *In re Zeigler*, 320 B.R. 362, 373 (Bankr. N.D. Ill. 2005). Under Illinois law, if the primary motivation for a transfer is the transferor’s intent to hinder, delay, or defraud

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<sup>1</sup> Under the UFTA, an “insider” of an individual debtor includes relatives of the debtor. 740 ILCS 160/2(g)(1)(A).



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creditors, the fact that other motivations may also be urged is irrelevant. *In re Schneider*, 417 B.R. 907, 915 (Bankr. N.D. Ill. 2009). Under the UFTA, if the transfer of property is determined to be fraudulent, the court treats the property as though the fraudulent transfer had not occurred. *MacDonald v. Estate of Gayton*, 469 F.3d 1079, 1081 (7th Cir. 2006).

In the present case, testimony at trial revealed at least six badges of fraud surrounding Defendant's transfers to Elzbieta: the transfers were made to an insider; Defendant continues to rent the transferred properties from Elzbieta; the transfer was made after Defendant had been sued by Wells Fargo and after he had ceased paying other creditors; the transfer was of substantially all of Defendant's assets; the value of the consideration received by Defendant was not reasonably equivalent to the value of the assets transferred (the real estate properties and cash); Defendant was insolvent or became insolvent shortly after the transfer was made; and the transfer occurred shortly after a substantial debt was incurred.

Here, the presence of these factors is substantial enough to find, regardless of the authenticity of the Bafia divorce, that Defendant made transfers of real property to Elzbieta with the specific intent to hinder, delay or defraud his creditors. Although Defendant offers explanations for why he transferred the properties to Elzbieta, they are not supported by the chronology of events. For instance, Defendant claims that he transferred the five properties to Elzbieta in exchange for her waiver of any interest in his business under the marriage settlement agreement; however, the evidence at trial revealed that these properties were transferred on January 19, 2010—eight days after Wells Fargo filed suit against Bafia, and ten months before the divorce action was filed. Further, Defendant's explanations at trial were often vague, and at times even contradictory. His recollection of events seemed selective and contrived, and often defied probability. In short, Defendant was not a credible witness.

Finally, as discussed above, at trial there was a failure of proof on Defendant's Counterclaim asserting breach of contract against Plaintiff. Defendant refused Plaintiff's offer to repair the defective windows at the Lowe project, and failed to complain about any defects in the windows at the Coles project until he asserted this Counterclaim. As a result, Defendant has failed to establish Plaintiff's breach, and judgment is entered in favor of Crystal Windows on both counts of Defendant's Counterclaim.

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## Judgment

On Plaintiff Crystal Windows's breach of contract claim, judgment is entered in favor of Crystal Windows and against Defendant Stanislaw Bafia for \$80,000 under the guaranty agreement, and \$30,567.30 in attorney's fees.

On Plaintiff Crystal Windows's breach of fiduciary duty claim, a judgment of no liability is entered in favor of Defendant Stanislaw Bafia.

On Plaintiff Crystal Windows's fraudulent conveyance claim, judgment is entered in favor of Crystal Windows and against Defendants Stanislaw Bafia; Elzbieta Scaber; and Chicago Title and Trust Company, as Trustee of Trust Nos. 8002354365, 8002354367, 8002354369. Defendant's January 2010 transfers of the following properties to Elzbieta Scaber are set aside: 6608 North Ramona, Lincolnwood, IL; 4562 North Elston, Chicago, IL; 1502-1510 East 74th Street, Chicago, IL; 7300 South May, Chicago, IL; and 7704-7706 South Emerald, Chicago, IL.

On Defendant Stanislaw Bafia's Counterclaim, a judgment of no liability is entered in favor of Plaintiff Crystal Windows.

This is a final judgment that disposes of the case in its entirety.

Judge Raymond W. Mitchell

ENTERED,

NOV 14 2012

Circuit Court - 1992

Judge Raymond W. Mitchell, No. 1992

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

CRYSTAL WINDOWS & DOORS IL CORP,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 10 L 10561
	)	
STANISLAW BAFIA, ELZBIETA SCABER, f/k/a	)	
ELZBIETA BAFIA and	)	
CHICAGO TITLE AND TRUST COMPANY, as Trustee	)	
of Trust Nos. 8002354365, 8002354366,	)	
8002354367, 8002354369,	)	
	)	
Defendants.	)	

## ORDER

THIS MATTER coming on to be heard on the motion of Crystal Windows & Doors IL Corp to correct this Court's judgment order of November 14, 2012, *nunc pro tunc*, all parties being duly notified and the Court being full advised in the premises;

IT IS HEREBY ORDERED:

1. THAT Crystal's motion to correct this Court's judgment order of November 14, 2012, *nunc pro tunc*, is granted;
2. THAT the judgment order of November 14, 2012, is corrected *nunc pro tunc* to state that, "Bafia conveyed five properties, including the marital home and E.S. Window's office, to four separate land trusts at Chicago Title and Trust Company, Trust Numbers, 8002354365, 8002354366, 8002354367 and 8002354369;
3. THAT the judgment order of November 14, 2012, is corrected *nunc pro tunc* to enter a judgment in favor of Crystal Windows & Doors IL Corp on its fraudulent conveyance claim against Defendants Stanislaw Bafia; Elzbieta Scaber; and Chicago Title and Trust Company, as Trustee of Trust Numbers 8002354365, 8002354366, 8002354367 and 8002354369; and,
4. THAT with the exception of the matters set forth in paragraphs 2 and 3, above, the judgment order of November 14, 2012 shall stand as entered.

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ENTER:

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Ira N. Helfgot  
Law Offices of Ira N. Helfgot  
39 South LaSalle Street, Suite 820  
Chicago IL 60603  
Atty. No. 16126  
312/558-3013

Judge Raymond W. Mitchell

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