



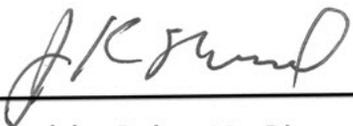
Order Filed on March 3, 2022
by Clerk
U.S. Bankruptcy Court
District of New Jersey

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
In Re: JOANN ANDERSON, Debtor.	Chapter 13 Case No.: 21-17202-JKS
JOANN ANDERSON, Plaintiff, v. NJSL 301, LLC, Defendant.	Adversary No.: 21-01396 Judge: John K. Sherwood

**DECISION AND ORDER GRANTING
DEFENDANT’S MOTION TO DISMISS**

The motion to dismiss filed by defendant, NJSL 301, LLC, is GRANTED for the reasons set forth on the following pages, numbered two (2) through fifteen (15).

DATED: March 3, 2022



Honorable John K. Sherwood
United States Bankruptcy Court

INTRODUCTION

Plaintiff Joann Anderson, the debtor in this Chapter 13 bankruptcy case, brought this adversary proceeding to set aside the transfer of her home in Hopatcong, New Jersey to the defendant NJSL 301, LLC. The transfer occurred pursuant to a final judgment in a tax foreclosure action. NJSL 301 purchased a tax sale certificate for unpaid property taxes due and owing by Ms. Anderson on her home. Subsequently, NJSL 301 filed a tax foreclosure action in the Superior Court of New Jersey and obtained a final judgment which vested it with title to the home.

Shortly after the entry of the final judgment, Ms. Anderson commenced her current Chapter 13 case. She then filed this adversary proceeding to avoid the transfer of her home to NJSL 301. While the plaintiff has alleged various theories of recovery in her Complaint, the focus of this decision is on the validity of the preferential transfer claim under § 547(b) of the Bankruptcy Code.

The pivotal question is when the home was transferred to NJSL 301. According to Ms. Anderson, the transfer occurred when the foreclosure judgment was entered, which was 89 days before the bankruptcy was filed. NJSL 301 contends that the transfer occurred on July 19, 2019 when it filed a Notice of Lis Pendens in connection with its tax foreclosure action. The lis pendens was filed more than two years before Ms. Anderson commenced her bankruptcy case. If the Court adopts the NJSL 301's point of view, Ms. Anderson's effort to set aside the transfer of her home to the defendant will be doomed because the 90-day look back period for preferences will have passed. The issue raised in this case has been addressed by well-reasoned decisions here in New Jersey and in other jurisdictions. Upon consideration, the Court is persuaded that the

plaintiff cannot state a preference claim under § 547(b) of the Bankruptcy Code because the transfer occurred more than 90 days prior the date on which she filed her bankruptcy case.

I. UNDISPUTED FACTS

Ms. Anderson still resides at her home in Hopatcong, New Jersey. She estimates that the value of her home is approximately \$235,000.¹ Ms. Anderson failed to pay her property taxes. On October 18, 2018, the Tax Collector for the Borough of Hopatcong sold tax certificate 18-00008 to the Borough of Hopatcong and, on February 22, 2019, the Borough of Hopatcong assigned the tax certificate to NJSL 301 for \$21,864.86.²

Thereafter, NJSL 301 commenced a tax foreclosure action against Ms. Anderson to, among other things, acquire title to her home. On July 16, 2019, NJSL 301 filed a Notice of Lis Pendens with the Office of the Clerk of Sussex County.³ As of April 30, 2020, the principal, interest, and subsequent taxes due upon the Tax Certificate were \$31,384.91.⁴ On May 29, 2020, the State Court fixed July 28, 2020 as the date by which Ms. Anderson could redeem her property.⁵

On June 30, 2020 (before the redemption date), Ms. Anderson filed a previous Chapter 13 bankruptcy case. In this previous case, NJSL 301 filed a proof of claim based on its tax certificate. Ms. Anderson proposed a 60-month Chapter 13 plan which provided for payment of the tax lien claim and the plan was confirmed. This gave Ms. Anderson the opportunity to pay

¹ Compl. ¶¶5, 8 & 9, ECF No. 1. Ms. Anderson relies on Zillow.com for the value of the Property.

² See Mot. to Dismiss, Ex. A & Ex. B, ECF Nos. 5-2 & 5-3.

³ See Mot. to Dismiss, ECF No. 5-6.

⁴ Compl., Ex. A.

⁵ Compl., Ex. A. The Final Judgment specifically states that July 28, 2020 was “fixed . . . as the time and place for the redemption of the premises upon payment thereof.”

NJSL 301's tax lien claim over time and preserve her home. Unfortunately, she defaulted on the plan payments and, by Order dated May 17, 2021, the case was dismissed.⁶

The State Court entered the final judgment on June 16, 2021, vesting NJSL 301 with "an absolute and indefeasible estate of inheritance in fee simple" to the property.⁷ On September 13, 2021, which was eighty-nine (89) days after the entry of the final judgment, Ms. Anderson filed her current Chapter 13 case.

II. THE COMPLAINT AND MOTION TO DISMISS

On October 12, 2021, the plaintiff commenced this adversary proceeding to avoid the transfer of her home to the defendant. The primary counts of the Complaint are the following:

Count I: avoidance of a fraudulent transfer under [11 U.S.C. § 548\(a\)](#);

Count II: avoidance of fraudulent transfer pursuant to N.J.S.A. 25:2-25 and [11 U.S.C. § 544\(b\)](#);

Count III: avoidance of fraudulent transfer pursuant to N.J.S.A. 25:2-27 and [11 U.S.C. § 544\(b\)](#); and

Count IV: avoidance of preferential transfer under [11 U.S.C. § 547\(b\)](#).

There are four other counts in the Complaint. The viability of these additional counts depends on Ms. Anderson's success upon at least one of the theories set forth in Counts I through IV.⁸

On October 15, 2021, NJSL 301 filed its Motion to Dismiss which focuses on Counts I through IV of the Complaint. Approximately a month later, the plaintiff filed a response to the defendant's motion.⁹

⁶ *In re Joann Anderson*, Bankruptcy Case No. 20-18044.

⁷ Compl. ¶¶ 14-16 & Ex. A.

⁸ See Defendant's informal memorandum in support of Motion to Dismiss at 2 (recognizing that the remaining counts in the Complaint request "ancillary relief" that is "derivative" of the claims alleged in Counts I through IV), ECF No. 5-1 at 2.

⁹ ECF Nos. 5 & 6.

The Court held a hearing on December 9, 2021 and dismissed Counts I through III. Count I was dismissed because § 548's two-year look back period was not satisfied. Under § 548(d)(1) of the Bankruptcy Code, a transfer is made when it is perfected. While title did not vest in NJSL 301 until June 16, 2021 upon entry of the final judgment, the transfer was perfected when the Notice of Lis Pendens was filed on July 16, 2019. Accordingly, the transfer was made when it was perfected on July 16, 2019, which is more than two years before this bankruptcy case was filed.

Counts II and III were based on Bankruptcy Code § 544(b) and provisions from New Jersey's Uniform Fraudulent Transfer Act or, as renamed, the Uniform Voidable Transaction Act, specifically N.J.S.A. 25:2-25 & N.J.S.A. 25:2-27. The Court dismissed these counts because an action to foreclose the right of redemption is specifically excepted from these state statutory provisions.¹⁰ See N.J.S.A. 54:5-87; N.J.S.A. 54:5-104.32. See also *2435 Plainfield Avenue, Inc. v. Township of Scotch Plains (In re 2435 Plainfield Ave., Inc.)*, 72 F. Supp. 2d 482, 487 (D.N.J. 1999) (holding that the Uniform Fraudulent Transfer Act, as modified by New Jersey's tax sale law, prevents a court from setting aside a tax foreclosure judgment as a fraudulent conveyance), *aff'd*, 213 F.3d 629 (3d Cir. 2000) (table decision).

The Court reserved decision as to Count IV because the Court had reservations about how to interpret the language in § 547 of the Bankruptcy Code concerning when a transfer is "made" for the purposes of a preference claim. The Court provided the parties with the

¹⁰ In August of 2021, the "Uniform Fraudulent Transfer Act" was replaced by and renamed as the "Uniform Voidable Transactions Act." *N.J.S.A. 25:2-20*.

opportunity to file supplemental briefs, which both parties did.¹¹ The matter is now ready for disposition.

III. STANDARD OF REVIEW ON A MOTION TO DISMISS

To survive a motion to dismiss for failure to state a claim, a complaint must contain sufficient facts, that when accepted as true, state “a claim to relief that is plausible on its face.”¹² Courts are required to accept the factual allegations in the complaint as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief.¹³ Conclusory statements and recitations of the law are insufficient.¹⁴ Courts ruling on a Rule 12(b)(6) motion, “must consider only the complaint, exhibits attached to the complaint, matters of public record, as well as undisputedly authentic documents if the complainant's claims are based upon these documents.”¹⁵

The Court applied this standard of review regarding its dismissal of Counts I-III of the Complaint. Now, the Court must determine whether the facts, when viewed in the light most favorable to Ms. Anderson, state a plausible claim under § 547(b) of the Bankruptcy Code.

¹¹ ECF Nos. 7 & 9. At the hearing, the Court explained its rationale and potential ruling on the pivotal issue primarily for the benefit of counsel so that they had full disclosure of the Court's viewpoint and the opportunity to respond before the Court issued a ruling on Count IV.

¹² *In re Energy Future Holdings Corp.*, 990 F.3d 728, 736–37 (3d Cir. 2021) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and citation omitted in the original)).

¹³ *Baptiste v. Bethlehem Landfill Co.*, 965 F.3d 214, 219 (3d Cir. 2020); *Landan v. Wal-Mart Real Est. Bus. Tr.*, 775 F. App'x 39, 42 (3d Cir. 2019) (citing *Foglia v. Renal Ventures Mgmt.*, 754 F.3d 153, 154 n.1 (3d Cir. 2014)).

¹⁴ *In re Energy Future Holdings Corp.*, 990 F.3d at 736–37 (3d Cir. 2021) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

¹⁵ *Mayer v. Belichick*, 605 F.3d 223, 230 (3d Cir. 2010).

IV. LEGAL ANALYSIS

A. Tax Sale Certificates and Foreclosure Proceedings in New Jersey

Municipalities in New Jersey are authorized to sell tax sale certificates to collect unpaid taxes owed on property and generate funds which they are not receiving from delinquent property owners.¹⁶ When a tax sale certificate is sold, the property owner retains the right to redeem its interest in the property by paying the amount due.¹⁷

After waiting the requisite amount of time, the certificate holder is entitled to commence a tax foreclosure action.¹⁸ In the action, the foreclosing tax certificate holder submits proofs and asks the court to fix the amount, time, and place for redemption. If redemption is not made by the deadline, the tax certificate holder may move for the entry of a final judgment.¹⁹ When a final judgment is entered, “title to the property in fee simple” is vested in the tax certificate holder.²⁰ This transfer occurs without regard to whether the property’s value significantly exceeds the tax debt owed on it. Although this result is authorized under New Jersey law, in situations where the value of the foreclosed property is substantially higher than the taxes owed, the tax lien holder receives a windfall on its tax claim while the property owner’s other creditors get nothing from the equity value in the property. And, the property owner loses its exemption in the property. Because this result is contrary to certain fundamental bankruptcy principles, tax lien foreclosures have been challenged as preferences and fraudulent conveyances in the bankruptcy courts.²¹

¹⁶ *In re Princeton Office Park. L.P.*, [504 B.R. 382, 391](#) (D.N.J. 2014) (citation omitted); *JNH Funding Corp. v. Ayed*, 450 N.J. Super. 271, 277, [161 A.3d 775, 779](#) (Ch. Div. 2017).

¹⁷ *Rossiter v. Simon (In re Rossiter)*, [412 B.R. 677, 681](#) (D.N.J. 2008).

¹⁸ N.J.S.A. 54:5–86.

¹⁹ *Caput Mortuum, LLC v. S & S Crown Servs. Ltd.*, 366 N.J. Super. 323, 337, [841 A.2d 430, 438](#) (App. Div. 2004).

²⁰ *Rossiter*, [412 B.R. at 683](#) (quoting *Cherokee Equities, L.L.C. v. Garaventa*, 382 N.J. Super. 201, 208, [887 A.2d 1203, 1207](#) (Ch. Div. 2005) (citing N.J.S.A. 54:5–87)).

²¹ See e.g., *GGI Properties, LLC v. City of Millville (In re GGI Properties)*, [568 B.R. 231](#) (Bankr. D.N.J. 2017).

When a tax sale certificate holder files a complaint in a tax foreclosure action, it is required to file a lis pendens, putting all third parties on notice of the action.²² The notice of lis pendens is filed with and recorded by the “county clerk or register of deeds and mortgages.”²³ The lis pendens provides constructive notice to subsequent interest takers in the property, such as a purchaser or mortgagee, that a dispute exists concerning the rights to the property and that any subsequent interest taker takes the property subject to the outcome of the litigation.²⁴

B. Preferential Transfers

“A preference is a transfer that enables a creditor to receive payment of a greater percentage of his claim against the debtor than he would have received if the transfer had not been made and he had participated in the distribution of the assets of the bankruptcy estate.”²⁵ According to the Third Circuit Court of Appeals, the ability to avoid preferential transfers serves the following dual purposes: (i) it discourages creditors from racing to the courthouse to dismember the debtor during his slide into bankruptcy, which gives the debtor some protection to work his way out of a difficult financial situation through cooperation with all of his creditors; and (ii) it facilitates the prime bankruptcy policy of equality of distribution among creditors of the debtor.²⁶

Under § 547(b), a transfer may be avoided as a preference if it: (1) was made to or for the benefit of a creditor, (2) was made for an antecedent debt, (3) was made while the debtor was

²² *N.J.S.A. 2A:15-6*.

²³ *N.J.S.A. 2A:15-12*.

²⁴ *Polanco v. Camden (In re Polanco)*, 622 B.R. 631, 637 (Bankr. D.N.J. 2020); *Manzo v. Shawmut Bank, N.A.*, 291 N.J. Super. 194, 199-200, 677 A.2d 224, 226-27 (App. Div. 1996).

²⁵ *Veltre v. Fifth Third Bank (In re Veltre)*, 732 F. App'x 171, 172 (3d Cir. 2018) (citation omitted).

²⁶ *In re Friedman's Inc.*, 738 F.3d 547, 557–58 (3d Cir. 2013) (citing *Union Bank v. Wolas*, 502 U.S. 151, 161 (1991) (quoting H.R. Rep. No. 95–595, at 177–78, U.S. Code Cong. & Admin. News 1978, pp. 6137, 6138)); *Velde v. Kirsch*, 543 F.3d 469, 472 (8th Cir. 2008).

insolvent, (4) was made on or within 90 days before filing for bankruptcy, and (5) enabled the creditor to receive more than it would have received in a Chapter 7 liquidation proceeding.²⁷

In *Hackler v Arianna Holdings Company, LLC (In re Hackler)*, [938 F.3d 473](#) (3d Cir. 2019), the Third Circuit Court of Appeals held that a transfer of real estate title conducted *via* New Jersey’s tax foreclosure procedures may be avoided as a preferential transfer under § 547(b).²⁸ The transfer at issue in *Hackler* was the entry of a pre-petition final judgment in a tax foreclosure action. In issuing its ruling, the Third Circuit made the following observations:

It is well-established that a “‘central policy’ of the Bankruptcy Code is the ‘[e]quality of distribution among creditors.’” In accordance with that policy, creditors of equal priority receive pro rata shares of the debtor’s property. A critical feature of this system is the ability to avoid pre-petition property transfers that benefit some creditors over others. The Code does so by allowing the unwinding of property transfers that meet certain requirements, thereby preventing some creditors from receiving windfalls at the expense of others.²⁹

While the appellant-defendant may have filed a notice of lis pendens in *Hackler*, it did not argue that such filing affected the date on which the transfer of real property occurred.³⁰ Consequently, Third Circuit did not address the central issue which this Court must decide.

C. Pursuant to § 547(b), When Was the Plaintiff’s Home Transferred to the Defendant?

The issue raised by the defendant is whether the transfer of Ms. Anderson’s home was “made” on or within 90 days before the debtor’s petition date. NJSL 301 argues that the date that

²⁷*Hackler v Arianna Holdings Company, LLC (In re Hackler)*, [938 F.3d 473, 477](#) (3d Cir. 2019).

²⁸ Prior to the Third Circuit’s opinion in *Hackler*, there were already bankruptcy court decisions holding that a transfer of real estate pursuant to a tax foreclosure sale could constitute a preferential transfer under § 547(b) of the Bankruptcy Code. See e.g., *GGI Properties, supra*; *Berley Associates, Ltd. v. Eckert (In re Berley Assocs., Ltd.)*, [492 B.R. 433](#) (Bankr. D.N.J. 2013).

²⁹ *In re Hackler*, [938 F.3d at 476](#) (quoting *Slobodian v. Internal Revenue Service (In re Net Pay Sols., Inc.)*, [822 F.3d 144, 150](#) (3d Cir. 2016) (quoting *Begier v. Internal Revenue Service*, [496 U.S. 53, 58](#) (1990))).

³⁰ [938 F.3d at 477](#) (3d Cir. 2019).

it filed the lis pendens is the date that the transfer was made because that was when its interest in the property was perfected. If the defendant is correct, the preference claim will fail because the lis pendens was filed well outside the 90-day preference period. The defendant cited cases that support its argument, but the Court decided to give the issue a closer review.

For purposes of preference claims under § 547, subsections (e)(1) and (e)(2) of the statute apply to the question of when a transfer is made. These subsections provide:

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

(A) a transfer of real property other than fixtures, but including the interest of a seller or purchaser under a contract for the sale of real property, is *perfected* when a bona fide purchaser of such property from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest that is superior to the interest of the transferee; and

(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, except as provided in paragraph (3) of this subsection, 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 30 days after, such time, except as provided in subsection (c)(3)(B);

(B) at the time such transfer is perfected, if such transfer is perfected after such 30 days; or

(C) immediately before the date of the filing of the petition, if such transfer is not perfected at the later of—

(i) the commencement of the case; or

(ii) 30 days after such transfer takes effect between the transferor and the transferee.

11 U.S.C. § 547(e) (*emphasis added*).

Looking closely at subsections (e)(1) and (e)(2) above, it is clear that (e)(1) covers when a transfer is “perfected” and (e)(2) covers when a transfer is “made.” Also, there is no doubt that the date that a transfer is perfected is relevant to the analysis of when it is made under (e)(2).³¹ But these sections also suggest that the date that a transfer is perfected is not necessarily the same as the date it is made for the purposes of § 547.

This point becomes clearer (or maybe more confusing) when the language in §548 of the Bankruptcy Code which covers fraudulent conveyances is compared to §547 on the topic of when a transfer is “made.” Significantly, § 548 states in a single provision:

[A] transfer is made when such transfer is so perfected that a bona fide purchaser from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee, but if such transfer is not so perfected before the commencement of the case, such transfer is made immediately before the date of the filing of the petition.

11 U.S.C. § 548(d)(1). Thus, under § 548(d)(1), it is easy to conclude that the date of perfection is the same as the date that the transfer is “made” for fraudulent conveyance purposes. This language in § 548(d)(1) led the Court to conclude that Ms. Anderson’s federal fraudulent conveyance claim (Count I) had to be dismissed because the transfer occurred outside of the two-year look back period. But, the Court struggled to understand why the drafters would state that a transfer is made when it is perfected for § 548 purposes, and then draw a distinction between when a transfer is “perfected” and when it is “made” in § 547(e). However, upon further review of the provisions of § 547(e), it is obvious that Congress’ purpose in enacting this subsection of the preference statute was to provide a 30-day grace period for the perfection of transfers in cases where there is a time gap between the granting of a security interest and the perfection of that interest.

³¹ *Stahlberger v. P.F. Ellison (In re Stahlberger)*, 2021 WL 509849, at *3 & *6-*7 (Bankr. D.N.J. Feb. 10, 2021).

Starting with the perfection analysis under § 547(e)(1), subsection (e)(1)(A) applies in this case because the transfer here involves real property. Generally, the subsection states that perfection occurs when under “applicable law” the interest of the holder of the lien or other interest in the real property would be deemed superior to the interest of a bona fide purchaser of the property from the owner. Courts in this District have held that the filing of a lis pendens by a tax certificate holder following its commencement of a tax foreclosure action against a debtor/property owner satisfies the definition of perfection in § 547(e)(1).³² In reaching this holding, courts rely on the New Jersey statute governing the effect of filing a notice of lis pendens, N.J.S.A. 2A:15-7, which states, in part:

[F]rom and after the filing of a notice of lis pendens, any person claiming title to, interest in or lien upon the real estate described in the notice through any defendant in the action as to which the notice is filed shall be deemed to have acquired the same with knowledge of the pendency of the action, and shall be bound by any judgment entered therein[.]³³

This Court agrees that the filing of a lis pendens in connection with a tax foreclosure action perfects the interest of the tax lien holder in the real estate. In this case, the defendant filed the lis pendens on July 16, 2019 and this is when the transfer was perfected.

Next, the Court considers § 547(e)(2) to determine when the transfer was “made.” This section (which has 3 subparts A-C) establishes a 30-day grace period for a creditor claiming an interest in property to perfect that interest, and if that happens, the transfer is deemed “made” when it “takes effect.” 11 U.S.C. § 547(e)(2)(A). If the creditor does not diligently perfect its interest within the 30-day period, the date of actual perfection is when the transfer is deemed to

³² *Stahlberger*, 2021 WL 509849, at *6 (Bankr. D.N.J. Feb. 10, 2021); *Polanco*, 622 B.R. at 637-38.

³³ *Polanco*, 622 B.R. at 637 (*emphasis omitted*); *Stahlberger*, 2021 WL 509849, at *6.

be made. 11 U.S.C. § 547(e)(2)(B). Finally, in situations where the acts necessary for perfection are interrupted by a bankruptcy filing, the transfer is deemed to be made: (i) immediately before the date of the filing of the petition or (ii) when the transfer of the interest takes effect if it is perfected within 30 days thereof (which would appear to require an act of perfection post-bankruptcy). 11 U.S.C. § 547(e)(2)(C). Essentially, § 547(e)(2)(A)-(C) codify the 30-day grace period that a secured creditor has to perfect its security interest after it is granted. If it is perfected in the 30-day window, it relates back to the date the security interest was granted. If not, the date of perfection is deemed to be the date of the transfer. Thus, § 547(e)(2) is much like § 548(d)(1), the only difference being the 30-day grace period.

In determining which of § 547(e)'s subparts apply, (B) and (C) can be eliminated because these sections pertain to situations where perfection of the interest occurs after the transfer has already happened. An example might be where a borrower grants a lender a security interest in an asset when it is purchased, but the lender does not file the appropriate documents to perfect the security interest until a later date. Here, the defendant filed the lis pendens on July 16, 2019 and, on that date, its interest in the plaintiff's home was perfected. Further, defendant's interest in the home remained perfected until the foreclosure judgment was entered on June 16, 2021. Thus, § 547(e)(2)(A) seems most applicable to the current facts.

Looking at §547(e)(2)(A) and eliminating the language that is not applicable, it says that "a transfer is made – at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at ... such time..." At first blush, the Court was of the view that the drafters were trying to make a distinction between when a transfer was "perfected" and when it "takes effect" for preference purposes. This was an intriguing approach in this case because Ms. Anderson did not lose her house to NJSL 301 until the foreclosure judgment was

entered. Logically, that would be the point in time when the transfer took effect. But, looking at the language of § 547(e)(2) together with the purpose of the provision (to provide a 30-day grace period for perfection) leads to the conclusion that the general rule for both preferences and fraudulent conveyances is that the date of perfection is the date of the transfer. The use of the term “takes effect” in § 547(e)(2)(A) is only intended to establish the date that a security interest is granted when that date is not the same as the date of perfection for the purposes of the 30-day grace period. Here, NJSL 301’s interest was perfected and took effect when the lis pendens was filed. That is when the transfer was made.

There are persuasive decisions by other Bankruptcy Courts that have addressed this issue and decided that transfers are made for preference purposes when the lis pendens is filed.³⁴ To reach this conclusion, these Courts have relied on the doctrine that a successful plaintiff’s remedy relates back to the date of the filing of a lis pendens.³⁵ They further suggest that the fact that the foreclosure judgment was entered during the preference period is “of no moment” because the foreclosure judgment is merely “confirmation of the existence of the transferred interest and [is] deemed to relate back to the date of the lis pendens.”³⁶ Indeed, one of the potential outcomes of a tax foreclosure action is that the property owner’s redemption right will be terminated and, when a lis pendens is filed, the world is on notice of that possibility. Thus, it is logical to have the entry of a final judgment in tax foreclosure actions, which terminates a property owner’s redemption right, relate back to the lis pendens filing date. Although this

³⁴ See e.g., *Stahlberger*, [2021 WL 509849](#), at *3-*6 (Bankr. D.N.J. Feb. 10, 2021) (Altenburg, J.); *Melaragno v. CitiMortgage, Inc. (In re Sandman)*, [2013 WL 3991971](#) (Bankr. W.D. Pa. Aug. 1, 2013).

³⁵ *Stahlberger*, [2021 WL 509849](#), at *6 (quoting *Connecticut v. Doehr*, [501 U.S. 1, 29](#) (1991) (J. Rehnquist, concurring)).

³⁶ *Melaragno*, [2013 WL 3991971](#) at *4.

relation-back analysis has some merit, the Court believes that it is unnecessary. As set forth above, the language of § 547(e)(1) and (2) is clear enough to conclude that NJSL 301's interest in the home was perfected and took effect on the same date. The 30-day grace period is not implicated and, therefore, the transfer was made when it was perfected.

V. CONCLUSION

For the reasons stated above, the Court concludes that the transfer was made outside of the 90-day preference period of § 547(b)(4)(A). Consequently, the defendant's Motion to Dismiss is granted in its entirety.