

JAN 18 2007

U.S. BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re:	)	
	)	
CARMEN L. RODRIGUEZ,	)	Chapter 13
	)	
Debtor.	)	No. 4-05-BK-06261-EWH
_____	)	
CARMEN L. RODRIGUEZ,	)	Adv. No. 4-06-00043
	)	
Plaintiff,	)	
	)	<b>MEMORANDUM DECISION</b>
v.	)	
	)	
DORINE'S BAIL BONDS, INC.,	)	
	)	
Defendant.	)	
_____	)	

**I. INTRODUCTION**

The Debtor seeks to avoid two Deeds of Trust on her homestead. Because she lacks standing to seek such relief, this adversary will be dismissed.

**II. FACTS AND PROCEDURAL HISTORY**

In November of 2004, the Debtor's son was arrested. In response to his request that she obtain his release from jail, the Debtor, a widow in her 70's, using information from the yellow pages, contacted a number of bail bond companies to see if a bail bond

1 could be obtained using her son's van as collateral. None of the companies she  
2 contacted would accept the van as collateral. Ultimately, the Debtor retained the  
3 services of Dorine's Bail Bonds to post a \$7,500 bond to obtain his release. Dorine's  
4 Bail Bonds agreed to post the bond if real property was pledged as collateral. The  
5 Debtor and her daughter testified that the Debtor offered to pledge a vacant lot she  
6 owned in Benson ("Benson Lot"). Dorine Garcia, the principal of Dorine's Bail Bonds  
7 and the sole shareholder of Dorine's Bail Bonds Inc., testified that the only collateral  
8 that was offered for the first bond was the Debtor's home.

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10 In connection with the issuance of the \$7,500 bond, the Debtor executed an  
11 Indemnity Agreement, Waiver of Abandonment of Homestead, a Deed of Trust and  
12 Assignment of Rents ("First Deed of Trust"), Durable Power of Attorney, and a Bail  
13 Bond Agreement. All of the agreements, other than the First Deed of Trust, were  
14 between the Debtor and "Dorine's Bail Bonds." The First Deed of Trust lists Dorine's  
15 Bail Bonds, Inc. as both the trustee and the beneficiary at the same address as  
16 Dorine's Bail Bonds. The Debtor also signed and was given a copy of a Collateral  
17 Receipt which lists the Debtor's home as her address and the collateral received as  
18 being a "prop lien."<sup>1</sup> The First Deed of Trust, which lists the property pledged as the  
19 Debtor's home, was recorded on November 15, 2004.

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21  
22 The Debtor's son was re-arrested in January, 2005. The Debtor again used  
23 Dorine's Bail Bonds to post a bond of \$25,000 to obtain his release. On January 6,  
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25 \_\_\_\_\_  
26 <sup>1</sup> A.R.S. § 20-340.01(E) requires that bail bondsmen issue pre-numbered receipts to  
27 the party paying for the bond. Whether the receipts provided to the Debtor met the requirement  
28 of A.R.S. § 20-340.01 is not addressed in this decision.

1 2005, the Debtor executed a second set of agreements with Dorine's Bail Bonds and a  
2 Deed of Trust and Assignment of Rents ("Second Deed of Trust") which lists Dorine's  
3 Bail Bonds, Inc. as both the trustee and the beneficiary at the same address as  
4 Dorine's Bail Bonds. The Debtor executed and was given a copy of a second Collateral  
5 Receipt listing her home address as her address and describing the collateral received  
6 as a "prop lien." The Second Deed of Trust was recorded on April 29, 2005. Like the  
7 First Deed of Trust, it lists the Debtor's home as the pledged property. Again, the  
8 parties disagree about what collateral the Debtor agreed to pledge. The Debtor asserts  
9 that she only agreed to place a Second Deed of Trust on the Benson Lot. Dorine  
10 Garcia testified that the Debtor agreed to pledge her home.  
11

12  
13 The Debtor's son was re-arrested in March of 2005. She again retained the  
14 services of Dorine's Bail Bonds to post a \$20,000 bond to obtain his release. No  
15 separate agreements were executed by the Debtor with respect to the \$20,000 bond.  
16 Dorine Garcia made changes to the Second Deed of Trust, which added the amount of  
17 the \$20,000 bond to the Second Deed of Trust, so that the total amount of the debt  
18 secured by the Second Deed of Trust was \$45,000. Dorine Garcia testified that the  
19 changes were made in front of the Debtor and with her consent. The Debtor did not  
20 initial the changes and denies that the changes were made in her presence or that she  
21 agreed to increase the amount of the indebtedness secured by the Second Deed of  
22 Trust from \$25,000 to \$45,000.  
23

24  
25 Dorine Garcia testified that the first and only time the Debtor mentioned the Benson  
26 Lot was in response to an inquiry about supplemental collateral for the third bond. In  
27 fact, the third Collateral Receipt issued to the Debtor on March 24, 2005, lists the  
28

1 Benson Lot as her home address and again describes the collateral received as a “prop  
2 lien.”

3 The Debtor and her daughter, who was present when all the agreements were  
4 signed, testified that Dorine Garcia never explained the content of any of the  
5 documents the Debtor was asked to sign. Dorine Garcia disputed that testimony. It is  
6 undisputed that Debtor never read any of the documents she signed. The Debtor  
7 testified that she signed the documents because she was told by Dorine Garcia that if  
8 she did not do so, her son would not be released from jail.

9  
10 Copies of the agreements, including the First and Second Deeds of Trust,  
11 (collectively “Deeds of Trust”) were not provided to the Debtor nor did she request  
12 copies until this litigation commenced. Debtor testified that she always believed that the  
13 only property being pledged to secure three bonds totaling over \$50,000 was the  
14 Benson Lot. Debtor also testified that she would have never signed any of the  
15 documents if she knew that she was pledging her house, rather than the Benson Lot,  
16 as collateral for the bonds.  
17

18  
19 All of the documents were notarized by Dorine Garcia, but the Debtor testified that  
20 the documents were not notarized in her presence. While Dorine Garcia disputes that  
21 assertion, she conceded that she did not request any identification from the Debtor  
22 before notarizing her signature. Dorine Garcia also did not maintain a “notary book” in  
23 2004 and 2005.  
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1 The Debtor's son did not timely appear for his court date and all three bonds were  
2 forfeited to the State of Arizona in June of 2005.<sup>2</sup> Thereafter, Dorine's Bail Bonds, Inc.,  
3 ("Dorine's") retained counsel who substituted in as the trustee under the Deeds of  
4 Trust. Thereafter, a Trustee's Sale was commenced to foreclose the Debtor's house.  
5 In response, the Debtor filed a chapter 13 petition.  
6

7 The Debtor's Schedules value the Benson Lot at \$2,700. During the trial, Debtor  
8 testified that she had an oral offer of \$10,000 for it and believed it was worth about  
9 \$22,000. The Debtor's Chapter 13 plan provides for monthly payments of \$25 a month  
10 for 60 months with no return to unsecured creditors whose claims total \$7,000. All of  
11 the Plan payments will be used to pay the Debtor's lawyer or the Chapter 13 Trustee.  
12

13 Shortly after the Chapter 13 case was filed, Dorine's moved for stay relief. The  
14 Debtor objected asserting that Dorine's did not have a secured claim due to various  
15 alleged defects in the Deeds of Trust and because the Debtor alleged that Dorine  
16 Garcia had fraudulently included the legal description of Debtor's home in the Deeds of  
17 Trust rather than the Benson Lot. Debtor then filed this adversary seeking a  
18 determination of the validity of the Deeds of Trust. Dorine's has agreed to continue the  
19 final hearing on its motion for relief from stay until this adversary is decided. Debtor has  
20 made no payments of any kind to Dorine's since filing her Chapter 13 case.  
21

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24 <sup>2</sup> Debtor's post-trial brief asserts that because canceled checks were not produced at  
25 trial, there is no proof that Dorine's Bail Bonds, Inc. actually paid Pima County for the forfeited  
26 bonds. This assertion is without merit. The Joint Pre-Trial Statement's – Statement of  
27 Uncontested Issues of Material Fact included a statement that Dorine's Bail Bonds was  
28 required to pay Pima County Superior Court the full amount of the bonds. Three different  
judgments of bond forfeiture were also admitted into evidence without objection from the  
Debtor.

1 final hearing on its motion for relief from stay until this adversary is decided. Debtor has  
2 made no payments of any kind to Dorine's since filing her Chapter 13 case.

3 The Debtor's complaint seeks a determination that the two Deeds of Trust are  
4 unenforceable because: (1) they were not properly notarized; (2) using the Debtor's  
5 home as the pledged collateral was fraudulent because the Debtor only agreed to  
6 pledge the Benson Lot; (3) the Second Deed of Trust was not timely recorded; (4) the  
7 agreements secured by the Deeds of Trust were too incomplete to be valid contracts;  
8 (5) Dorine's Bail Bonds, Inc. is not qualified under Arizona law to act as a trustee of the  
9 Deeds of Trust; and (6) the Second Deed of Trust was altered to add \$20,000 to the  
10 amount pledged without the Debtor's consent. The relief requested was a  
11 determination that the Deeds of Trust are invalid and a declaration that Dorine's claim is  
12 unsecured. The Complaint does not include a jurisdictional statement. The Joint  
13 Pretrial Statement asserts that this Court has jurisdiction over the adversary under  
14 11 U.S.C. §§ 548 and 105.

15 Trial was held on September 12, 2006. After a number of extensions, both sides  
16 submitted closing argument in the form of post-trial briefs. The Debtor's Post-Trial  
17 Memorandum asserts that because the Second Deed of Trust was recorded more than  
18 60 days after execution and was altered without Debtor's consent, it can be avoided by  
19 the Debtor under 11 U.S.C. §§ 544 and 522(h). The Debtor's Post-Trial Memorandum  
20 also includes an allegation, not made in the Complaint, but raised at trial, that in order  
21 for the Deeds of Trust to be valid and enforceable, the beneficiary should be Dorine's  
22 Bail Bonds – the party to the various agreements purportedly secured by the Deeds of  
23 Trust, not Dorine's Bail Bonds, Inc., a separate legal entity.



1 (h) The debtor may avoid a transfer of property of the debtor or recover a setoff  
2 to the extent that the debtor could have exempted such property under  
3 subsection (g)(1) of this section if the trustee had avoided such transfer, if --  
4 (1) such transfer is avoidable by the trustee under section 544, 545, 547,  
5 548, 549, or 724(a) of this title or recoverable by the trustee under section  
6 553 of this title; and  
7 (2) the trustee does not attempt to avoid such transfer.

8 Section 522(g)(1) limits the Debtor's avoidance rights by providing that a debtor may  
9 only exempt property recovered under § 522(h) if: (1) the transfer was not voluntary,  
10 and (2) the debtor did not conceal the property.<sup>3</sup>

11 Read together, § 522 (g) and § 522 (h) allow a debtor to avoid the transfer of  
12 property that the trustee could have avoided, but failed to do so if the property is  
13 legitimately exempt, was not concealed and was not voluntarily transferred. In this  
14 case, the only issue which could preclude Debtor's standing to challenge the Deeds of  
15 Trust is whether she voluntarily granted a security interest in her house when she  
16 executed the Deeds of Trust.

17 The purpose for excepting a voluntary transfer of property from a debtor's  
18 avoidance rights is to prevent a debtor from receiving a windfall, which would enable  
19 him to benefit from his own voluntary act. In re Davis, 169 B.R. 285, 295 (Bankr. E.D.  
20 N.Y. 1994). However, the Bankruptcy Code does not define the term "voluntary" for

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21  
22 <sup>3</sup> There is a split of authority on whether Chapter 13 debtors may exercise the trustee's  
23 avoidance rights free from the limitations of § 522(g). Compare In re Cohen, 305 B.R. 886, 897  
24 (9th Cir. B.A.P. 2004) (Debtor has concurrent power with the Chapter 13 Trustee to exercise  
25 avoidance powers "for the benefit of the estate") with In re Hansen, 332 B.R. 8, 13 (10th Cir.  
26 B.A.P. 2005) (Congress limited Chapter 13 debtors' avoidance powers to those set forth in  
27 § 522(h)). However, in this case, the Debtor's Chapter 13 plan, which provides for no  
28 distribution to creditors other than her lawyer, demonstrates that the Debtor is seeking to avoid  
the Deeds of Trust, not for the benefit of the Chapter 13 estate, but to preserve Debtor's  
homestead. Accordingly, the limitations of § 522(g) apply.



1 purposes of a transfer under §§ 522(g). Courts have recognized that involuntary  
2 transfer may occur under circumstances which involve fraud, material  
3 misrepresentation or coercion. The burden of proving that the transfer was not  
4 voluntary is on a debtor. Davis, 169 B.R. at 295, In re Corwin, 135 B.R. 922, 924  
5 (Bankr. S.D. Fla. 1992).  
6

7 In this case, the Debtor asserts that Dorine Garcia committed fraud by using the  
8 Debtor's house as the pledged collateral rather than the Benson Lot. In order to prove  
9 that the Debtor's house was fraudulently pledged, the Debtor must demonstrate that  
10 Dorine Garcia made a knowingly, materially false representation with the intent of  
11 deceiving the Debtor, that the Debtor was both ignorant of the falsity of the  
12 representation and had a right to rely on it. Peery v. Hansen, 120 Ariz. 266, 269, 585  
13 P.2d 574, 577 (Ariz. App. 1978).  
14

15 However, the testimony of the Debtor that she believed the Benson Lot was the  
16 collateral for the Deeds of Trust is not credible. Both the Debtor and her daughter  
17 testified that they had attempted to obtain a bond to secure the release of Debtor's son  
18 by pledging his van. No bonding company would accept the van as adequate collateral.  
19 The Debtor's schedules indicate she placed a very low value on the Benson Lot—not  
20 even half the value of the first \$7,500 bond. Even if the Debtor's testimony at trial that  
21 the Benson Lot is worth around \$22,000 is accepted, that value is insufficient to  
22 adequately collateralize bonds totaling over \$50,000. The Debtor was aware that there  
23 were only two alternatives to obtain her son's release – (1) pay cash in the full amount  
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1 of the bond, something the record indicates she did in Tucson City Court<sup>4</sup> or (2) pay a  
2 bail bondsman a fee of 10% of the bond and post collateral to cover the cost of the  
3 bond in the event it was forfeited. Debtor could not have reasonably believed that any  
4 bond would be issued if the pledged collateral was worth far less than the bond.  
5

6 Even if the Debtor's testimony was credible, she cannot meet the reasonable  
7 reliance requirement needed to prove her fraud claim because she did not read the  
8 agreements, including the Deeds of Trust. The general rule under Arizona law is that  
9 parties have a duty to read the agreements they sign and if they do not do so, they will  
10 not be permitted to avoid a contract because they supposed its terms were different  
11 than what they really were. See Mutual Benefit Health & Accident Association v.

12 Ferrell, 42 Ariz. 477, 487, 27 P.2d 519, 523 (Ariz. 1933) (overruled on other grounds).

13 There are exceptions to that rule when "there are special and peculiar circumstances  
14 justifying the signer in relying upon the representations, such as a fiduciary relation  
15 between the parties, that the signer was . . . unable to understand the nature of the  
16 agreement and the like." Ferrell, 42 Ariz. at 487-88, 27 P.2d at 523, cited in Darner  
17 Motor Sales, Inc. V. Universal Underwriters Insurance Company, 140 Ariz. 383, 399,  
18 682 P.2d 388, 404 (Ariz. 1984).  
19  
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21 However, there is no evidence that a fiduciary relationship existed between the  
22 Debtor and Dorine's. Nor has any Arizona case or statute been cited by the Debtor that  
23 creates such a fiduciary duty. Also, there is no evidence that the Debtor was unable to  
24 understand the agreements she signed. She simply did not take the time to read the  
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26  
27 <sup>4</sup> Transcript at p. 74, lines 23-25.

1 agreements because she was anxious to obtain her son's release. The Debtor,  
2 therefore, has not met her burden of demonstrating that Dorine's committed fraud by  
3 including the Debtor's homestead in the Deeds of Trust.  
4

5 While the Debtor did not prove that Dorine's committed fraud, the transfer may  
6 nevertheless not have been voluntary. An involuntary transfer occurs where a debtor is  
7 either: (1) subjected to an outside influence which overcame her free will or (2) lacked  
8 knowledge of all facts essential to her decision to grant the transfer. In re Corwin, 135  
9 at 924; see also In re Reaves, 8 B.R. 177, 181 ( Bankr. D. S.D. 1981). In this case, the  
10 Debtor was not shamed, harassed, insulted or pressured by Dorine Garcia, so there is  
11 no basis for assuming that she was not able to exercise her free will. Debtor's disputed  
12 testimony was that the content and consequences of the various agreements were not  
13 explained to her and that had she known all of the essential facts, she would not have  
14 executed the documents, especially if she had been told it could result in the loss of her  
15 home. Even if Debtor's allegations are true, they would be insufficient to make the  
16 Deeds of Trust involuntary transfers. As one court has noted:  
17

18 Financial institutions are not required to issue "Miranda type" admonitions. The  
19 failure to explain the effect of the deed of trust is insufficient to show an  
20 involuntary transfer. To be involuntary, the debtor must further prove that the  
21 creditor pressured him into transferring the property through harassment,  
insults or shame . . . .

22 In re Echoles, 21 B.R. 280, 281-82 (Bankr D. Ariz. 1982) (citation omitted). The Debtor  
23 was told if she did not execute the documents, her son would not be released from jail,  
24 but that was a simple statement of fact. Without adequate collateral for the bonds, the  
25 bonds would not be posted and the Debtor's son would have remained in jail. See  
26 Corwin, 135 B.R. at 924 (evidence was insufficient to establish that creditor intended to  
27

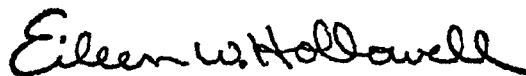
1 harass, insult or shame the debtors where failure to make the transfer would, in fact,  
2 result in serious legal ramifications).

3  
4  
5 **VI. CONCLUSION**

6 Having failed to establish that the granting of the Deeds of Trust were involuntary  
7 transfers as required by § 522(g)(1), the Debtor lacks standing under § 522(h) to set  
8 aside the Deeds of Trust. This court, therefore, lacks jurisdiction to decide the claims  
9 in the Debtor's Complaint, including the challenge to the validity of the Deeds of Trust  
10 based on claims of improper notarization, unauthorized alteration, and the effect of the  
11 disparity between the named beneficiary in the Deeds of Trust and the party to the  
12 other agreements (i.e. the allegation that Dorine's Bail Bonds is not the same entity as  
13 Dorine's Bail Bonds, Inc.).  
14

15 The foregoing constitutes the findings of fact and conclusions of law required by  
16 Fed. R. Bankr. P. 7052. A separate order will be entered this date dismissing this  
17 adversary with prejudice. Counsel for Dorine's is also directed to submit an order, upon  
18 10 days' notice to Debtor and her counsel, granting Dorine's relief from the automatic  
19 stay.  
20

21 Dated this 18th day of January, 2007.  
22  
23

24 

25 \_\_\_\_\_  
26 EILEEN W. HOLLOWELL  
27 UNITED STATES BANKRUPTCY JUDGE  
28

1 Copy of the foregoing  
2 mailed this 19th day of  
3 January, 2007, to:

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